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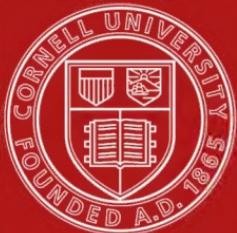
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HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
OF THE HOUSE OF REPRESENTATIVES

ON BILLS AFFECTING

INTERSTATE COMMERCE

PART I

WASHINGTON
GOVERNMENT PRINTING OFFICE
1910

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES.

JAMES R. MANN, ILLINOIS, *Chairman.*

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|------------------------------------|-------------------------------------|
| IRVING P. WANGER, PENNSYLVANIA. | WILLIAM M. CALDER, NEW YORK. |
| FREDERICK C. STEVENS, MINNESOTA. | CHARLES G. WASHBURN, MASSACHUSETTS. |
| JOHN J. ESCH, WISCONSIN. | WILLIAM C. ADAMSON, GEORGIA. |
| CHARLES E. TOWNSEND, MICHIGAN. | WILLIAM RICHARDSON, ALABAMA. |
| JAMES KENNEDY, OHIO. | CHARLES L. BARTLETT, GEORGIA. |
| JOSEPH R. KNOWLAND, CALIFORNIA. | GORDON RUSSELL, TEXAS. |
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| JAMES M. MILLER, KANSAS. | ANDREW J. PETERS, MASSACHUSETTS. |
| WILLIAM H. STAFFORD, WISCONSIN. | |

BILLS AFFECTING INTERSTATE COMMERCE.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Tuesday, January 18, 1910.

The committee was called to order at 10.25 a. m., Hon. James R. Mann (chairman) presiding.

The CHAIRMAN. I suppose we ought, this morning, so far as possible, to see what gentlemen wish to be heard upon the matters that we expect to come before the committee, and arrange definitely the time for hearing them so far as it may be practicable. I think we might ascertain what Members of the House are here who wish to be heard upon certain bills, and hear them first. I understand that Mr. Graham wishes to be heard.

STATEMENT OF HON. WILLIAM H. GRAHAM, A REPRESENTATIVE FROM THE STATE OF PENNSYLVANIA.

Mr. GRAHAM. Mr. Chairman, with reference to this bill, H. R. 13861, which I have introduced, I would say that representatives from all sections of the country will probably wish to be heard. There is a delegation coming from New Orleans, from the Northwest, and from the East. It will naturally take some time to get them here, and I would like to ask if you will kindly fix a date next week upon which they will be assured a hearing.

The CHAIRMAN. What day next week would be satisfactory to you?

Mr. GRAHAM. We want to fix a date so that we can get these men here at a particular hour, and then if they do not avail themselves of the opportunity, that will be the end of it. I should say about next Wednesday.

The CHAIRMAN. Do you know how many gentlemen will come?

Mr. GRAHAM. No; I do not know; but we will probably only have two or three address the committee. I should think that one or two hours, at the outside, would be all the time that we would ask of your committee.

The CHAIRMAN. If we fix next Wednesday morning, do you think that will be satisfactory to you?

Mr. GRAHAM. Very satisfactory indeed, and I am very much obliged to you.

The CHAIRMAN. I understand that Mr. Sheppard wishes to be heard upon the bill that he has introduced.

STATEMENT OF HON. MORRIS SHEPPARD, A REPRESENTATIVE FROM THE STATE OF TEXAS.

Mr. SHEPPARD. Mr. Chairman and gentlemen of the committee, I have introduced a bill, No. 2139, giving the Interstate Commerce Commission power to establish rates for all railroads in the United States.

Mr. BARTLETT. Do you mean that they shall originate rates?

Mr. SHEPPARD. It gives them the absolute power of establishing rates, and it applies the Texas railroad commission law practically to the United States. But, on further study of the matter, I am rather convinced that this would be impracticable, and that the enormous number of tariffs, the conflicting interests that exist in so many parts of the country, would seem to me to require the whole time of the commission in the establishment of rates, leaving but little time for them to look after other things. At least, that is the way it occurs to me now, after giving the matter further study after introducing the bill. On the other hand, I find that the President has recommended that where a railroad increases its rates the commission shall have the power, on its own initiative, to investigate as to the reasonableness of that rate. One proposition is made to investigate the reasonableness of existing rates. It seems to me that there ought to be some remedy in that regard, and I think that the medium between the two propositions, my proposition to establish rates absolutely and the proposition of the President and others to give the commission power to examine into the reasonableness only, and then increase it—it will require the railroads to file all tariffs with the commission at stated periods, whether they be repetitions of existing rates or not, or increases or decreases, and then to give the commission the power, on its own initiative or on complaint, to examine into the reasonableness of those rates.

The CHAIRMAN. That is practically the existing law.

Mr. SHEPPARD. Then why is the recommendation of the President necessary to give the Interstate Commerce Commission the power to investigate an increase on its own initiative?

The CHAIRMAN. "On its own initiative" is another proposition.

Mr. SHEPPARD. At the present time, Mr. Chairman, specific complaint must be made before the commission has the power to investigate the reasonableness of a rate, if I understand the law correctly. If some means could be devised by which the whole body of rates could be arrayed before the commission periodically, and then give the commission the power to investigate on its own initiative, when they think proper, I think we could arrive at the result desired.

Mr. RICHARDSON. Does your bill give the commission full authority to originate a rate, and to direct where it shall be put into effect?

Mr. SHEPPARD. Yes, sir.

Mr. RICHARDSON. Do you not believe that to be a very great step toward government ownership of railroads?

Mr. SHEPPARD. I think so, and, as I say, after studying the matter further, it occurs to me that it would be impracticable for any commission to establish rates throughout the country.

Mr. BARTLETT. But the President recommends it.

Mr. SHEPPARD. The President recommends that only where the railroads increase certain rates the commission shall have the power to investigate them.

Mr. RICHARDSON. Do you not believe, Mr. Sheppard, that if I had the power to fix the rate or price that a man should charge for anything, that I would also control his business?

Mr. SHEPPARD. As I say, I am not insisting upon the bill, but I am simply here to make a statement—

Mr. RUSSELL. As I understand you, you do not place yourself as opposed to the principle of the rates originating with the commission,

but in this particular instance you think that the labor would be too much?

Mr. SHEPPARD. That is it. It occurs to me that under the circumstances it would be impracticable.

Mr. RUSSELL. Have you changed your views with reference to the fairness of the principle of letting the commission originate the rate?

Mr. SHEPPARD. Not at all.

Mr. RUSSELL. Providing the commission had the facilities for doing the work in a practical way?

Mr. SHEPPARD. That is it exactly. I believe it is more practicable for the state commissioner to have that power at the present time than the Interstate Commerce Commission. I have taken that view upon a further study of the matter, after reading the bill very carefully.

Mr. BARTLETT. I see that your bill provides for the classification and subdivision of all freight and property transported over the railroads by the commission. Do you wish to present that?

Mr. SHEPPARD. That is supplementary. The main proposition is the one of absolute power to fix the rates.

Mr. BARTLETT. Then do you want to press this classification and subdivision of freight and property?

Mr. SHEPPARD. I do not care to press that at the present time.

STATEMENT OF HON. MARTIN D. FOSTER, A REPRESENTATIVE FROM THE STATE OF ILLINOIS.

Mr. FOSTER. I appear in behalf of bill H. R. 5468, a bill to make the interstate rates no greater than the sum total of the local rates. In a case of passenger rates from one State to another, the railroads will not be permitted to charge more for an interstate ticket than they would be entitled to charge for the sum total of the local rates between the two States. The bill also makes the same condition with reference to freights, that the freight rates shall not be greater than the sum total of the local rates between two points.

Mr. STAFFORD. Have you read the bill introduced by the chairman of this committee, Mr. Mann?

Mr. FOSTER. No, sir; I have not.

Mr. STAFFORD. I was going to ask if the provision carried in his bill did not embody the same principle as is carried in your bill?

Mr. RICHARDSON. What is the existing law?

Mr. FOSTER. The law that stands now is about as follows: For instance, in Ohio and Indiana there is a 2-cent rate, and yet in traveling in one point in Illinois to a point in Indiana, and crossing the border line, the railroads charge 3 cents.

Mr. TOWNSEND. Have you ever made a complaint to anybody in regard to that?

Mr. FOSTER. Yes, sir.

Mr. TOWNSEND. What was the ruling of the commission?

Mr. FOSTER. They claimed that that did not apply to passenger rates, but only to freight rates. The Interstate Commerce Commission answered that they could only take it up in case a formal complaint was made, and it was shown that the rate was excessive, and that the complainants would have to come before the commission in order to do that.

Mr. TOWNSEND. You understand, do you not, Mr. Foster, that in almost every case—I know of no exceptions—where that question has been heard by the commission, the commission has ruled that the sum of the locals was the proper rate.

Mr. FOSTER. Then the law is not enforced. That is not done excepting possibly where a complaint is made, and a complaint must be made in each individual case in order to get it decided.

Mr. STAFFORD. But you must remember, Mr. Foster, that the sum total of the rates upon the mileage from Chicago to Washington is less than the rate upon a 2 cents per mile basis. It is less than the through rate would be upon that basis, and the sum total of the mileage from Chicago to Philadelphia is less than what it would be upon the 2-cent basis of a through rate.

The CHAIRMAN. The provision in the bill which I introduced, section 3, to amend section 4 of the act to regulate commerce, provides: "That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the local rates," and so forth.

Mr. FOSTER. If that covers this point, then that is all I ask for, for at present it is a great annoyance.

The CHAIRMAN. I suppose what you want is to have it enacted into law.

Mr. FOSTER. Yes, sir; and if you do that I will be satisfied, whether it is through the bill that I have introduced or the one introduced by the chairman of this committee.

Mr. ESCH. Is this the same bill introduced by you in the Sixtieth Congress?

Mr. FOSTER. Yes, sir.

The CHAIRMAN. The 2-cent rate exists in Illinois, in Indiana, Ohio, and Wisconsin, but you state that it does not apply to the interstate business between those States?

Mr. FOSTER. No, sir.

Mr. STAFFORD. It does between Chicago and Milwaukee.

The CHAIRMAN. That may be so in certain cases.

Mr. FOSTER. In going from my home to Cincinnati it costs \$2.60 more than if the 2-cent rate applied all the way through.

Mr. STEVENS. Do you not think it would be a good thing to have the rates regulated by the States, and have the National Government do nothing with it?

Mr. FOSTER. Oh, no, I think that we must have an interstate law.

Mr. STEVENS. What is the use of having an interstate law if the State can make rates that will control the whole business?

Mr. FOSTER. Well, the interstate law tends to make the rates applicable beyond the State.

Mr. STEVENS. We make the interstate law the same as the State law, and we give the States the initiative, and are obliged to follow them. Do you think that is good policy?

Mr. FOSTER. In a case of this kind we think that a passenger should not be charged more in traveling from one State into another than the rate that is fixed in each State.

Mr. STEVENS. That means that the States have the power to make rates, and we are obliged to follow.

Mr. FOSTER. They should not charge more than the sum total of these local rates.

Mr. STEVENS. That is to say, you believe that the States should make the rates, and that the Interstate Commerce Commission should have nothing to do with it?

Mr. FOSTER. I don't say that they shall have nothing to do with it, but that the railroads shall not charge a greater sum than the sum of the locals.

Mr. STEVENS. That is what I have stated, that the States should make the rates.

Mr. FOSTER. If they make it, I think the interstate law should prevent their exceeding the State rates.

The CHAIRMAN. I suppose it is your theory that a State can not lower a rate lower than will render a reasonable profit to a railroad company?

Mr. FOSTER. Sure; that is true.

The CHAIRMAN. The railroad company accepts the rate in the State; it can afford to carry at that rate throughout the State?

Mr. FOSTER. Throughout the State; yes.

STATEMENT OF HON. CHARLES J. FAULKNER.

Mr. FAULKNER. Mr. Chairman, I did not come here for the purpose of addressing the committee this morning. Under the instructions of the committee and the formulation of the schedule, I think it was understood that the railroads would not be required to present their objections to the bills under consideration until after they had heard the evidence of those in favor of the original measures. Consequently we have not notified any of those who were going to reply to the statements made by those holding the affirmative in this matter for that reason, believing that of course after the committee had heard all the statements of those favorable to these bills that it would then give us an opportunity to secure the attendance of the witnesses necessary to meet any statements made by those favorable to their side of these measures.

The CHAIRMAN. How much time do you desire for that purpose?

Mr. FAULKNER. It depends, of course, Mr. Chairman, upon the character of the bills; but I have somewhat of an impression myself, without having any reason for it, I admit, from any statement made by any member of this committee, that the probabilities would be that the committee would try to get through with those bills that did not follow entirely the bill introduced by the chairman of the committee and the bill introduced by Mr. Townsend; that after getting through with the hearing of the arguments pro and con upon the other measures, that they would concentrate upon those two bills, perhaps, because I find upon an examination of those bills that they cover the points of one-half of the bills on the calendar in one form or another; and then that you would then take up those two bills and discuss them together. Now, I have no absolute reason for saying that, and I have no right to expect that from anything that I have heard as coming from any member of this committee, but it was simply my own idea of the regularity of the hearing.

The CHAIRMAN. I had supposed that those who were in favor of the bills would make their statements, if they desired to be heard, but apparently very few desire to be heard; and that if the gentlemen whom you represent desire to be heard in opposition to any of the propositions in the bills, that you would be given that opportunity. I don't think it is practicable to separate the particular bills at this time.

Mr. FAULKNER. I have not heard, Mr. Chairman, whether the Representative on your right, Mr. Wanger, who introduced a bill involving the commodity clause, proposes to press those bills for consideration at this session of Congress or not.

The CHAIRMAN. You must remember all the time that the committee itself, and the members of the committee, ought to be, and I think are, pretty well informed in reference to most of these matters through previous consideration, and it may not be assumed simply because some one is not heard in favor of a bill that there is no member of the committee in favor of it. If you have anything to urge against it I would suggest that you present your views.

Mr. FAULKNER. Well, Mr. Chairman, I would not feel justified in occupying the time of the committee this morning, nor in fact—

The CHAIRMAN. I did not mean this morning.

Mr. FAULKNER. I have arranged for certain gentlemen to take up the different features of these measures who were peculiarly competent to lay their views before the committee. I believe in always presenting to a committee of this character the persons who are most competent to give them the most satisfactory explanations to assist and guide them, if possible, in the enactment of legislation of this kind. I believed that there were other men with whom I am associated whom I could call here, and who are far more competent than myself to discuss these matters. I have arranged for that, but have not yet indicated to them the time that they should be here.

The CHAIRMAN. How soon will those gentlemen be here?

Mr. FAULKNER. Well, Mr. Chairman, if you want to go right on with us, I would say next week. We could not get them here before next week. I had no idea that we would be called upon before next week, and did not arrange to have them here before that time; and if you will indulge us—

The CHAIRMAN. There are several people here interested in behalf of the railways. Do you practically represent the railway interests with respect to a majority of these bills; in other words, can you arrange among yourselves the order of the hearing, if we give you the time?

Mr. FAULKNER. I think, Mr. Chairman, that I may say that we three gentlemen here represent the railroad interests of the country, and that any arrangement we make, including also Mr. Buckner, who is represented also here—that we, in fact, represent the railroad interests of the country.

The CHAIRMAN. Supposing we should give the railroad people next week for their hearings, with the exception of Wednesday, you might arrange the order of the hearings as you please. I have no objection to giving a reasonable time to anyone in favor of these bills.

Of course, I never dreamed that very many people would be heard upon the specific bills, excepting upon the general proposition; but apparently no one is here this morning in behalf of the amendments

to the interstate commerce act, although everyone that we could reach was notified. I think that the people have been backward in reference to it; still we ought not to take advantage of their neglect, but should give them a reasonable time. But it should be understood that the committee itself will have to have some reasonable length of time to consider these bills after the hearings are completed.

Mr. WANGER. Mr. Chairman, in view of the remark of Senator Faulkner, it seems proper that I should say that the bill H. R. 9504 was introduced in lieu of bill 9284; that the bills were introduced to make the interstate commerce act effective as to commodities in the sense in which I have thought—and I have supposed the committee had thought—the act was intended to be effective when it was amended in 1906, that act having been construed since its enactment by the Supreme Court. This measure, H. R. 9504, is intended to meet the decisions of the Supreme Court. Therefore it has seemed to me that the committee were *prima facie* in favor of the bill.

Mr. TOWNSEND. I want to suggest that I would like personally to meet the views of the committee and take up the general proposition of the revision of the interstate commerce law the very first week in February.

The CHAIRMAN. I suppose we can take it up just as soon as we get through with these hearings.

Mr. FAULKNER. Will you permit me to say that if the committee determines upon the question favorably suggested by Mr. Townsend, if it does not delay the committee—and we, you know, have never attempted to delay them in any manner—I would make the additional suggestion in reference to our hearing, that as you are going to have a hearing on the car-stake bill on Wednesday next, I would suggest if you would allow us to commence on Thursday and then continue consecutively from day to day until we have gotten through—

The CHAIRMAN. Let me see if I understand you. Mr. Townsend suggests that those in favor of these bills shall not be heard until the first week in February. Are you prepared to go ahead a week from Thursday and proceed until that time and then give way?

Mr. FAULKNER. I don't know as it will take us until the 1st of February, but it would give us that time, and we could continue every morning to suit the convenience of the committee.

The CHAIRMAN. A week from Thursday is the 27th of January, and it is not very long from then until the first week in February.

Mr. FAULKNER. That is true. I do not know but that we could perhaps get through with these matters before that.

The CHAIRMAN. Suppose that we arrange to set aside a week from Wednesday for Mr. Graham, and commence on Thursday morning with the hearing of the railroad people, which shall continue the balance of the week; commencing on the following Monday morning the hearing of the Industrial Traffic Association, or other gentlemen who favor all bills; and if the railroad people are not through within the time fixed, then we will hear them first.

Mr. STAFFORD. I move that that order be made.

STATEMENT OF MR. THOMAS W. HARDWICK, A REPRESENTATIVE FROM THE STATE OF GEORGIA.

Mr. HARDWICK. Mr. Chairman, the bill that I have introduced and which is before your committee, H. R. 7527, was introduced by myself during the last session of Congress. I want to say first about this bill that it proposes to change the existing law, and that the amendment is expressed in one sentence or part of a sentence at the top of page 2, lines 1 and 2: "or on an inquiry instituted on its own motion." By referring back to the beginning of that sentence you will see that the bill proposes to amend section 15 of the Hepburn bill so as to give the Interstate Commerce Commission power to determine and prescribe just and reasonable rates and charges on its own motion, or on an inquiry instituted on its own motion. This amendment was proposed by myself on the floor of the House, and voted upon by the House when the Hepburn bill was passed. It was the only amendment of that character offered at that time in either House, and was rejected, of course, by the House.

This proposition, of course, is not a new one to the committee nor to the country. In the State that I represent in part in this body we have that power; that is, it institutes rates on its own motion, whether any complaint is filed or not, or whether any case is pending or not. If I am correctly informed, the same is true with respect to the State of Texas. The Texas railroad commission has that power. I will not undertake to make a definite statement—I will make an abstract of the different state laws—but I think that several of the western States do the same thing, although, as a matter of fact, the majority of them do not have such laws. However, I will undertake to supply detailed information upon that subject.

It seems to me that this is a very necessary power to be conferred on our national rate-making body. In the first place, you gentlemen know better than anybody else—any of us do who are Members of this House—the intricacy and the difficulty of undertaking to find out what just and reasonable rates are, and, as a matter of fact, it is a subject upon which experts disagree. But it seems to me that if we have an expert body here in Washington to protect the interests of the people, all shippers, and of the citizens of the United States against unjust and unfair railroad rates and charges, that one of its principal duties ought to be to ascertain the truth and let the people know everywhere what the facts are, whether they know it or not. Now, the average shipper, in your district and in mine, will not know, in the first place, whether the interstate rate is reasonable or not. He does not know enough to base a complaint on, and if he did know, the expense, the difficulty, the delay, and the annoyance of the proceeding is enough to deter your average constituent and mine from instituting a complaint. It is true that you may say in answering that suggestion that all he has to do is to write a letter to the commission; that that might be held to constitute a complaint. But it seems that he is up against the proposition that if he does write a letter and does institute a complaint in that way alone, that the other side will be represented by able and astute counsel, and that the commission has no prosecuting counsel, as I understand it, who

appear in the interest of the people. And unless he employs a lawyer or somebody who has an expert knowledge upon these questions to come up and present the facts in his case to the Interstate Commerce Commission he will never obtain anything more than an ex parte investigation, and this ex parte investigation from the standpoint of the other party.

Now, Mr. Chairman, it seems to me that this commission ought to have power to look into the facts themselves; and they would do it, of course; their investigation necessarily would lead them to that. But when they discover—and they ought to know better than the masses of the people throughout the country—when they discover that some such rate is being exacted, or some unreasonable charge is being demanded by the railroads, they ought to have the right, whether any case is ever made by anybody on earth or not, and whether any complaint is ever filed by anybody, to correct it; not only to disclose the state of affairs that exists, but to correct the evil if it is an evil and to reduce the rate if it is excessive, and abolish the practice if it is wrong.

Mr. ESCH. Have you the bill introduced by Mr. Townsend, giving the commission the initiative to cover the scope of your bill?

Mr. HARDWICK. Mr. Townsend's bill was introduced this session, and I have not been able to make any comparison. Possibly he can tell me about it.

Mr. TOWNSEND. Would you want the commission to proceed without a hearing?

Mr. HARDWICK. No, I think not; I did not intend that. The bill as I have drawn it does not provide for that. Your bill covers that point, you say?

Mr. TOWNSEND. Yes, sir.

Mr. HARDWICK. In connection with these other things, have you incorporated them into your bill?

Mr. TOWNSEND. Yes.

Mr. HARDWICK. When this question was up before in the House, while it was defeated by a considerable majority, yet there seemed to be considerable sentiment in support of the amendment, and I think we would have gotten a much larger vote if it had not been for the arrangement made by the leader of the minority relative to the amendment offered.

The CHAIRMAN. I think it is the belief on the part of the committee that under existing law the commission has the power on its own initiative to make an order of that kind, but I think your amendment would be incorporated in a bill.

Mr. HARDWICK. I am very glad to hear that, because that meets my views exactly. I do not think they ought to have a right to do this thing without giving the parties in interest a chance to be heard.

Mr. RICHARDSON. You are in favor of giving the railroads notice?

Mr. HARDWICK. Yes.

Mr. RICHARDSON. Your bill does not provide for that.

Mr. HARDWICK. Yes; when you consider the balance of the law, it does. It does not propose any change upon that subject. My bill reads: "That the commission is authorized and empowered, and it shall be its duty, whenever, after full hearing on a complaint made as provided in section 13 of this act, or on complaint of any common

carrier, or on an inquiry instituted on its own motion"—the words "full hearing" modify each one of those sentences, according to my understanding of that language.

Mr. RICHARDSON. You would be willing to let the railroads have notice to come in?

Mr. HARDWICK. Undoubtedly; my bill provides for that, and the amendment which I offered on the floor of the House provided for that.

Mr. RICHARDSON. Now, that really clothes the Interstate Commerce Commission ultimately with the right of fixing the rates?

Mr. HARDWICK. Yes, sir.

Mr. RICHARDSON. That is what you mean?

Mr. HARDWICK. That is what I mean.

Mr. RICHARDSON. To initiate the rate?

Mr. HARDWICK. To initiate the rate.

Mr. RICHARDSON. That gives the commission absolute control over the common carriers of the country.

Mr. HARDWICK. It does, after they have been heard on the subject.

Mr. RICHARDSON. And when a man has control over the price of an article that you sell he has control of your business, has he not?

Mr. HARDWICK. Unless you subscribe to that theory, then there is no basis upon which you can urge any of this legislation.

Mr. RICHARDSON. That is your view?

Mr. HARDWICK. Yes; and it is bound to be the view of this committee, because there is not a single basis upon which they can rest any of this legislation unless you rest it upon that.

Mr. RICHARDSON. When the Interstate Commerce Commission has the right to initiate a rate, instead of waiting for some citizen who has some complaint to come before them and advocate it, then they absolutely have control over the common carriers of the country, for they would not initiate a rate unless they had reason to suspect that something was wrong, and if they had that suspicion confirmed, then they would initiate the rate.

Mr. HARDWICK. But I do not believe that a commission established by Congress, that is worthy of the name, will act on suspicion. They ought to act upon the facts, and they ought to know the facts. The reason I want to give them this power is because they ought to know better than anybody else what the truth and justice is about this matter.

Mr. ADAMSON. Does this bill give the power to initiate rates? It is for the purpose of correcting existing rates and not making an original rate.

Mr. HARDWICK. I do not agree with you about that, and I have read this bill pretty carefully. I do not think that is true. The commission acts for the purpose of prescribing what are just and reasonable rates.

Mr. ADAMSON. But there must be a complaint made if there is an unjust rate.

Mr. HARDWICK. There is a provision made for action in which there is no complaint made.

Mr. ADAMSON. It reads, "or on an inquiry instituted on its own motion, it shall be of the opinion that any of the rates or charges whatsoever, demanded, charged or collected by any common carrier

or carriers, subject to the provisions of this act, for the transportation of persons or property as defined in the first section of this act, or that any regulations or practices whatsoever of such carrier or carriers affecting such rates, are unjust or unreasonable, or unjustly discriminatory"—there is not a word in it excepting what aims at the discovery and the correction of an existing evil.

Mr. HARDWICK. Undoubtedly, and I think we are together probably, but approach this subject from somewhat different angles.

Mr. ADAMSON. The only difference between your bill and the existing law is not in the manner of the investigation, but in the correcting process, and who may initiate an inquiry. You provide that the commission may institute the inquiry on its own motion, but the law stands as it was.

Mr. HARDWICK. If my friend from Georgia will pardon me a minute, I may say that I am right where I started, and yet I see the justice of his criticism. Of course, if I had provided in this bill that the power should be conferred upon the commission to initiate rates without hearing or investigation, then I would have approached the position that I imagine my friend from Alabama, Mr. Richardson, thought I was occupying. I have never, in my own mind, gone that far. I do think, however, that this railroad commission ought to have the power to institute proceedings itself, to start the proceedings, to make the inquiry.

Mr. RICHARDSON. There would be no new rates initiated unless there were new railroads?

Mr. HARDWICK. No.

Mr. RICHARDSON. And with respect to the rates now, any fixing of a rate would involve the change of a rate.

Mr. HARDWICK. Undoubtedly; it is only a technical difference, the difference between tweedledum and tweedledee. What I want is to confer upon this commission the power to find out the truth, and after they have found out the truth, let them do justice.

The CHAIRMAN. I am going to ask you to give attention to section 8 of the bill 16312, introduced by me. I don't ask you to do it now, but later.

Mr. HARDWICK. I will be very glad to comply with your suggestion, and I have no doubt that you have probably covered the same matter. I have offered this bill at every session of Congress since the Hepburn bill was passed. I thought at the time that the House ought to have adopted these provisions, and I was disappointed when it did not. Since then I have seen two Presidents of the United States, both belonging to the opposite political party to mine, practically recommend this same thing. Mr. Roosevelt, in his annual message to the first session of Congress under his presidency after this bill had been in operation, recommended it, and he recommended it again in one of his numerous special messages to our body. I think Mr. Taft's recent recommendation goes as far as I have gone, or as far as this bill would take us. I offered it before he had made his position known. I don't know whether the administration would support it or not, although a year and a half after I offered it in the House they seem to be in favor of it. As I have said, it was the only proposition of this kind offered in either body, and President Roosevelt has recommended it.

Mr. RICHARDSON. Did the President in his message state that the Interstate Commerce Commission had the power to initiate rates?

Mr. HARDWICK. No, sir. I understood that President Taft had gone, in his message to us and in his speeches upon his western tour, at least that far. I may be wrong about that.

Mr. RICHARDSON. My understanding is, on the question of directly or indirectly initiating a rate, that he took this position: That under the present law a railroad had to give thirty days' notice to increase the rate, and Mr. Taft took the position that the Interstate Commerce Commission should have the right to inquire into the rate before it went into effect, not longer than sixty days after the date designated by the railroad that it would go into effect.

Mr. HARDWICK. I think, if you will pardon me, that President Taft went further than that; that he recommended practically the same thing that is in this bill, if I understand it. I will put in my notes the exact language used by the President, both in his message and in his speeches.

The CHAIRMAN. The only purpose in recommending it was this, that the present law probably provides—it has never been decided—that the Interstate Commerce Commission could exercise that power; that section 13 would give them that power, but there is doubt about it. Your proposition and the proposition in the Townsend bill will clear up that matter.

Mr. HARDWICK. As long as Mr. Townsend has a bill on the subject already, I suppose he will supplement what I have said.

I am glad to see that your committee will give consideration to this question about which I have been fighting.

Mr. SIMS. If I understand your replies to the questions of Mr. Richardson, this would turn over to the Interstate Commerce Commission the power to fix the rates, and that it will amount, in practice, to the ownership of the railroads; that is, it will turn over the handling of all commerce and business to the commission; and will not the fixing of rates without any further power of control over the railroads place their operation in their hands?

Mr. HARDWICK. Well, I think that question is argumentative. I will say frankly that I am on the side of the gentleman from Tennessee. But if we are not to go this far, to give them this power, then we ought not to have any regulation at all. Of course, I do not know whether we ought to go so far as to regulate prices or not; but if we are to have regulation, it ought to conduce to competition and to prevent consolidation and monopoly.

The CHAIRMAN. Is there anything further that you would like to submit to the committee?

Mr. HARDWICK. I want to submit extracts from President Roosevelt's messages and from the message of President Taft.

The CHAIRMAN. Can you at the same time attach the laws of the several States with reference to the power of initiating rates?

Mr. HARDWICK. I was going to undertake that.

The CHAIRMAN. I think, however, that you will find that in one of the reports of the Interstate Commerce Commission, a report that is 4 or 5 years old.

The CHAIRMAN. Is there anyone else to be heard this morning?

Mr. FAULKNER. So as to be definite in my mind—I may have misunderstood, and I want to get this perfectly straight—I understand

now that the railroads come next Thursday, and it is the purpose or desire of the committee that those parties who will speak on Thursday, Friday, and Saturday shall discuss the general bills outside of the two bills that I mentioned, leaving the two bills to be discussed after the traffic associations shall discuss those measures on next Monday and following.

The CHAIRMAN. I don't think you ought to wait until the traffic associations have discussed them. We will be very glad to hear you discuss all of those propositions.

Mr. FAULKNER. All of those propositions involved in the two bills, as well as in the others.

(Adjourned at 11.35 a. m.)

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HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
OF THE HOUSE OF REPRESENTATIVES

ON BILLS AFFECTING

INTERSTATE COMMERCE

PART II

WASHINGTON
GOVERNMENT PRINTING OFFICE

1910

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES.

JAMES R. MANN, ILLINOIS, *Chairman.*

| | |
|------------------------------------|-------------------------------------|
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| WILLIAM H. STAFFORD, WISCONSIN. | |

BILLS AFFECTING INTERSTATE COMMERCE.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D. C., Wednesday, January 26, 1910.

The committee met at 10 o'clock a. m., Hon. James R. Mann in the chair.

The committee thereupon proceeded to the consideration of the bill (H. R. 13861) "To confer additional powers and impose additional duties on the Interstate Commerce Commission."

STATEMENT OF MR. F. R. BABCOCK.

The CHAIRMAN. We are waiting on the gentlemen who wish to be heard in favor of Mr. Graham's bill, No. 13861. Have you gentlemen any programme among yourselves? If you have, we shall be very glad to acquiesce in it.

Mr. BABCOCK. I will say, Mr. Chairman, that we have not any definite programme, except that we have quite a few speakers here.

The CHAIRMAN. Give us your name, first.

Mr. BABCOCK. My name is F. R. Babcock, representing the National Wholesale Lumber Dealers' Association. I am also a lumber manufacturer and shipper.

I was going to say that while we have not any definite programme we will try to produce as many three or four or five minute speakers as you will care to hear with brief arguments in favor of our bill.

I appear before you in behalf of bill H. R. 13861, in which I am interested, first, as representing the National Wholesale Lumber Dealers' Association, and second, as a lumber manufacturer and shipper. Believing the bill is a just and fair one, I desire to state briefly why I feel it should have due consideration at your hands and eventually become a law.

We all recognize the absolute necessity of securely and safely fastening, binding, and racking all commodities transported on flat and gondola cars in order to avert accidents and prevent loss of life and property, and we believe the only way this can be done is in uniformity and without prejudice in all parts of the United States so as to do away with the present discrimination.

Lumber, representing as it does the second largest tonnage of any commodity known to the common carrier, inasmuch as it is excelled only by coal, becomes a very important factor; especially is this true when it can be said without fear of contradiction that in addition to its being the second largest in tonnage, it is one of the largest (if not the largest) revenue earners to carriers, as these are facts that have been proven to the Interstate Commerce Commission, before whom many of the points in interest have been brought out and established, all of which evidence can be produced for your consideration if desired.

Statistics filed with the Interstate Commerce Commission by the carriers for the year ending June 30, 1905, show that lumber and forest products originating on railroads aggregated 80,436,860 tons annually; at an average of 23 tons to the car, this makes 3,497,254 cars, about one-half of which, or approximately 1,748,627 cars, were open cars, for which the necessary car stakes, binders, and bracers are now being furnished by the shipper, and ordered to be arranged so as to comply with master car-builder rules and specifications as translated by the various superintendents of transportation. Therefore in some sections and localities shippers are required to stake cars much more securely and at a greater expense than in others where the superintendent of transportation may be more lenient. It is in this connection that we claim unfair and unjust discrimination.

The carriers furnish for the transportation of coal specially built coal hoppers; for coke a special coke-rack car; for live stock a specially equipped car; special car doors for grain shipments at not to exceed a maximum charge of \$2 a car; dunnage for sugar, at \$1.50 a car; dunnage for oil, at 80 cents a car. Gentlemen, we ask in all fairness, "Why should the shippers of forest products not enjoy the same privileges?" We offer to the carriers a commodity second in tonnage, second to none as a revenue earner, and one that moves every day, year in and year out, and what do we get in return? An equipment totally inadequate to perform its duty as required by the classifications governing it. Every flat and gondola car that is given us to load carries with it a stipulation that we shall load or pay freight on 34,000 pounds or more, and master car-builder rules setting forth how the car must be equipped and bound off in a workmanlike manner before it will be accepted or moved by the carrier, at an expense for material and labor ranging from \$1.50 to \$7.50 a car, according to the location and the strictness of the officers under whose jurisdiction they move.

Now, right here, gentlemen, I desire to call attention to another very interesting feature. By the use of these stakes and equipment which we are now forced to supply at our own expense we actually enhance the earning capacity of each car from 35 to 75 per cent, which puts the earning power of that car just that much ahead of a box car for the same service. For example, take a 100,000-capacity box car. If the lumber is of suitable size to be loaded in a box car we can get probably 50,000 to 60,000 pounds on a car; on a gondola of the same capacity, which you all know costs only about one-half to two-thirds as much to build and maintain as a box car, with the use of these stakes and binders we can load as high as 110,000 pounds. Suppose these two cars were traveling from a common West Virginia shipping point to New York City, where the average rate of freight is about 16 cents, what would be the result? The box car with 60,000 pounds at 16 cents a hundred would earn \$96, and the gondola, with 110,000 pounds at 16 cents a hundred, would earn \$176. For the same service identically this shows a net increased revenue to the carrier of \$80, all made possible by the use of this extra equipment. Do you wonder, gentlemen, that we are here to ask you to enact a law providing that these facilities of shipment, which are now furnished under the master car-builder rules and specifications as to shape, size, character of material, etc., so as to provide safety to life and protection to property, and which at the same time increases

the carrying and earning power of the equipment, shall be furnished at the expense of the carrier?

We show by the above example how the earning capacity of cars is increased by the use of these stakes. It may be said that this is an extreme case; but to prove that while it may be extreme it is not unusual the following cars were shipped from our own mill in January of last year, which actually contained by scale weight the following amounts:

| | Pounds. |
|-----------------------------|---------|
| P. R. R. No. 276158----- | 112,700 |
| P. R. R. No. 278970----- | 103,400 |
| P. R. R. No. 282796----- | 95,700 |
| W. N. Y. & P. No. 1542----- | 103,300 |
| P. L. No. 857267----- | 105,400 |
| P. R. R. No. 277884----- | 106,000 |
| P. R. R. No. 290333----- | 109,100 |
| P. R. R. No. 279276----- | 127,400 |
| P. R. R. No. 297623----- | 111,800 |
| P. R. R. No. 279214----- | 109,400 |
| P. R. R. No. 88544----- | 100,200 |
| P. R. R. No. 274956----- | 108,200 |

All these cars were staked and bound off by us at our expense, notwithstanding the fact that by so doing we increased the capacity and revenue-earning power of each car fully 75 per cent over what a box car of the same capacity would have carried and earned.

Many of our shipments originate on the South Fork branch of the Pennsylvania Railroad, and large consignments of coal originate on the same branch. We note for your consideration the following comparison of rates to substantiate some of the foregoing statements:

From South Fork Branch stations to—

| | Lumber, per hundred- weight. | Coal. | |
|-----------------------|---------------------------------------|-------------------|----------------------------|
| | | Per gross ton. | Per hundred- weight. |
| Philadelphia, Pa..... | | | Cents. |
| Philadelphia, Pa..... | 11 | \$1.85 | 8.26 |
| Newark, N. J..... | 12 | 1.85 | 8.26 |
| New York City..... | 13 | 1.85 | 8.26 |
| Boston, Mass..... | 17 | 1.85 | 8.26 |
| Buffalo, N. Y..... | 12 | 1.70 | 7.5 |
| Baltimore, Md..... | 11 | 1.55 | 6.99 |

Likewise, many of our shipments originate from Davis, W. Va., on the Western Maryland Railroad, and we note below a few comparisons in rates from that point:

From Davis to—

| | Lumber, per hundred- weight. | Coal. | |
|-----------------------|---------------------------------------|-------------------|----------------------------|
| | | Per gross ton. | Per hundred- weight. |
| Pittsburg, Pa..... | | | Cents. |
| Pittsburg, Pa..... | 12 | \$1.60 | 8 |
| Baltimore, Md..... | 12 | 1.60 | 8 |
| Philadelphia, Pa..... | 12 | 1.60 | 7.14 |
| New York City..... | 15 | 1.55 | 6.92 |
| Boston, Mass..... | 20 | 2.60 | 11.6 |
| Cleveland, Ohio..... | 15 | 1.35 | 6.03 |
| Columbus, Ohio..... | 13 | a \$1.15 | 5.75 |

a Per net ton.

I have heretofore referred to unjust and unfair discrimination, and as an illustration of that point I have in mind a condition that exists right here in Washington. If a dealer should buy a carload of lumber in Georgia, have it shipped in here, and reship all or part of it north, the railroads will not allow the same stakes that protected and carried that shipment all the way from Georgia to Washington to be used again, but arbitrarily stipulate that No. 1 sound oak must be used of character and size costing from \$6 to \$10 a car—an absolutely uncalled-for requirement that causes waste and destruction of lumber which our Forestry Department is trying so hard to conserve. If the stakes are good enough to protect life and the transportation of lumber from Georgia to Washington, it stands to reason they should perform the same duty for another hundred miles or so.

Another point I desire to mention is that the master car-builder rules in certain localities require 4 by 5 inch stakes to be used, when the lugs or pockets on the cars are only 3 by 4 inches, thus making it necessary, in order that they shall fit and come within the requirements of the aforesaid rules, to take a broadax and cut away a portion of the stakes before they can be driven into the pockets. In many instances there are not enough pockets on the car and the stakes have to be put on the inside of the car.

All of these many details would soon remedy themselves if the carriers are required to furnish their instrumentalities of shipment for the transportation of lumber and forest products, as do they for the transportation of other commodities. Up until about three years ago not only did we furnish the stakes, but we paid the freight on them. When the National Wholesale Lumber Dealers' Association placed before the Interstate Commerce Commission a claim praying for relief the carriers came before the commission and conceded our demands as to free freight on the stakes to the amount of 500 pounds a car, and asked to have the case dismissed, but the commission ruled that we had a valid claim and should be heard. The result was a long story, and the case terminated in a decision by a majority of the commission in favor of the carriers; but in so doing the commission did not pass upon the law, saying, in part: "It is deemed unnecessary to consider certain questions of law which have been ably discussed in the briefs of counsel and in oral argument."

Mr. TOWNSEND. Would it disturb you to be interrupted there with a question?

Mr. BABCOCK. Not at all, Mr. Townsend.

Mr. TOWNSEND. Have you made any complaint to the commission under the existing law as to the unreasonableness of these regulations of the railroads?

Mr. BABCOCK. I think so. I think our claim would clearly answer your question.

Mr. TOWNSEND. I say, have you made complaint?

Mr. BABCOCK. Yes, sir; about three years ago we went before the Interstate Commerce Commission and placed this matter before them. The railroad people at that time promised us, in our committee work, that if we found a practicable and feasible stake they would adopt it permanently, and equip their cars with a permanent stake.

Mr. TOWNSEND. What was the finding of the commission?

Mr. BABCOCK. I will cover that. The finding of the commission was against the plaintiff.

Mr. ADAMSON. Are you sure it was since the adoption of the Hepburn law, to which Mr. Townsend refers?

Mr. BABCOCK. Yes; I am pretty sure of that.

Mr. TOWNSEND. You are going to talk about that later, are you?

Mr. BABCOCK. I refer to it here briefly; yes, sir.

Mr. TOWNSEND. All right.

Mr. BABCOCK. I shall be glad to have you interrupt me at any time, gentlemen.

Chairman Knapp said, in his opinion, "lumber has been bought and sold for more than fifty years under the conditions that now exist," but in this Mr. Knapp is clearly mistaken, as little or no attention was apparently given to this subject until the wrecking of the Duquesne limited train on the Baltimore and Ohio Railroad near Rockwood, Pa., several years ago, which cost the lives of some eighty-odd people, caused by the breaking of the stakes on a carload of lumber that had passed just ahead of the limited. From that day on the master car builders have been more specific in their requirements and have manifoldly increased the burdens of the shipper.

It is only in the last two or three years that the master car builder rules have put an additional burden upon the shipper by demanding that in shipping bark the car doors must be staked; as shown on the attached photograph.

From the opinion handed down by the Interstate Commerce Commission, Commissioner Clark dissented and filed the following report:

There is a clear distinction which should be recognized and maintained between the obligations which fairly rest upon the carrier and those which it may properly impose upon the shipper. If a shipper requests a certain kind of car, or if he must have a certain kind of car for his shipment, it is proper that he should be required to secure his shipment upon or within the car by appropriate blocking, staking, or otherwise, and so protect it from damage to itself.

He makes a clear distinction there—that it should be staked to protect itself, not to protect the railroad.

Mr. TOWNSEND. He does not contend, though, that there ought not to be suitable protection against accidents.

Mr. BABCOCK. Oh, that is the backbone of our argument—that it should be done.

Mr. ADAMSON. And that the railroads ought to do it.

Mr. BABCOCK. And it can never be regularly done until it is done under their own supervision, at their own expense, so that they can make it alike all over the United States.

Mr. ESCH. Is there any uniformity in the requirements as to staking on the different railroad systems?

Mr. BABCOCK. No, sir; I think I can safely say that there is not. Certain systems attempt to have it uniform on their roads, but in the case of the various systems over the country the evidence that was brought out demonstrated that in many cases cars were allowed to pass that perhaps were not staked more than half as securely as others. That is one of our contentions as to the unreasonableness of this.

Mr. ESCH. Does one system refuse to take a loaded car from another system if it does not conform to its own rules as to staking?

Mr. BABCOCK. I think they have done such things; yes, sir. In many instances we have had cars taken by an initial road and hauled to a junction, and there held up by the master car builders or superintendents on the ground that they were not properly staked; and we have possibly had to send a man down to that junction with an additional shipment of stakes, and there reload or restake the cars before the railroads would carry them on. That is very frequent.

Mr. ESCH. To what extent do these roads comply with the recommendations of the Master Car-Builders' Association?

Mr. BABCOCK. In Pennsylvania and West Virginia, where we operate, they are very rigid regarding that—very rigid. In some localities they are not so much so. In our arguments before the Interstate Commerce Commission, one of the most extensive lumbermen of the United States appeared for the railroads when we were establishing the cost of these stakes. It did not cost him nearly as much money to stake his cars as it did us. It was clearly apparent to the lumbermen why it did not—because he owned his own road, and his interest in his railroad was far more extensive than that in his lumber business. His lumber is being depleted; he has not very much left in Pennsylvania. His railroad, on the other hand, is there for all time. It is only natural to assume, from the fact that he owns his original road, that by a little manipulation he could get passed through cars that were not staked as securely as ours. This, we say, is a mistake. No matter whether the shipper owns his road or not, the lumber ought to be securely fastened. That is apparent to everybody. But there is no doubt that some sections are being required to stake much more securely than others.

Commissioner Clark goes on to say:

But unless the shipper requests or requires a certain kind of car the carrier should provide a car which will substantially serve the shipper's purpose without additional equipment being furnished by the shipper at his own expense. Lumber is shipped in both open and closed cars, and the rates are the same whatever car is used. It does not, therefore, seem that the rates have been adjusted with a view to the expense of staking open cars. If a shipper has a shipment of lumber to move and can use either a closed or an open car, and does not request an open car, and the carrier for its own convenience furnishes him an open car, it is simple justice that it should be so equipped by the carrier as to perform for the shipper substantially the same service which the closed car would perform.

Mr. STAFFORD. Is there any greater convenience in shipping in an open car than in a closed car?

Mr. BABCOCK. Yes and no. If we are operating in a locality where the railroads prefer to give us, and do give us, open and gondola cars, we so build and construct our yard as to load more advantageously gondola cars, and vice versa. In the South, where they give us in some localities almost exclusively box cars, we build our equipment to load box cars. Where we are equipped more particularly to load gondola cars, it might be said that it would be a little more inconvenient to load box cars. However, the evidence brought out before the commission clearly proved that where the equipment is built for loading box cars, they can be loaded even more cheaply than gondola cars, as we will attempt to show you by a photograph. In loading a gondola car, care has to be taken; you have no walls

to build to; the ends of the planks must be built uniformly, and a pair of steps put up at the end of the car for the convenience of the railroad operators. All of this takes time and skilled labor. In loading a box car, on the other hand, you have the walls of the car, and all you have to do is to shove the lumber in over a roller, and any boy that is big enough to handle the lumber can put it in place.

The CHAIRMAN. Which would you prefer to do—load in a box car, or load in the gondola car and furnish your own stakes?

Mr. BABCOCK. I would rather load in a box car.

The CHAIRMAN. Let me ask you this question: As far as the lumbermen are concerned, then, you would be perfectly willing to have the railroads abolish gondola cars altogether?

Mr. BABCOCK. If they will give us what cars we want; yes, sir.

The CHAIRMAN. Of course, it is their business to furnish cars.

Mr. BABCOCK. Yes, sir. I might say, to make this a little clearer, that there are some kinds of lumber that can not be put in a box car. Large timber is shipped from the Pacific coast, of course, and also from the extreme south; and it is only fair to the carriers to say that timbers of that kind could not be transported in box cars if we wished to do it. I am speaking of lumber that can be loaded in either car, and that we are shipping every day.

Commissioner Clark says, further:

If the shipper is obliged to have or prefers to have an open car, and so indicates in his demand upon the carrier, it is not unreasonable to require the shipper to provide such stakes, blocking, etc., as will secure his load upon the car which he is obliged to have or which he prefers to have.

Tariff regulations carrying out these ideas would be clear and simple and, once established, would remove many questions of controversy as to what is and what is not the carrier's duty.

For these reasons I am unable to agree fully with the conclusions of the majority opinion in these cases. I am authorized by Commissioner Harlan to say that he concurs in the views herein expressed.

Therefore we are led to believe if the Interstate Commerce Commission has been governed by the intent and true construction of the law and the evidence in the case it would have been compelled to find for the plaintiff. But, be that as it may, we believe when the Hepburn bill was enacted into a law it was the full intent and belief of every lawmaker of the United States that he was providing a law adequate in every way to abolish what we now pray to have abolished by having this law so amended that no misconstruction can be put upon it. I quote from the Hepburn bill as follows:

And the term "transportation" shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all service in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this act to provide and furnish such transportation upon reasonable request therefor, and to establish through rates and just and reasonable rates applicable thereto.

All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.

Therefore we submit that it was the original intent and purpose of the Hepburn bill to provide a law to compel the carriers to furnish all necessary facilities of shipment, hence our desire to have a bill that

will definitely settle this question, because we regret to note a disposition on the part of the carriers to disregard their obligation in regard to allowing free freight on car stakes. Notwithstanding the fact that it is required by law and is made part of their tariffs, in many instances we are compelled to file claims in order to collect this freight allowance, at a cost of even more than the claim itself, as on individual cars the amount is very small.

We find a great deal of trouble in some localities in ascertaining whether or not we have been credited for this 500 pounds. The railroads seem to choose not to give us that information on the freight bill, though it should be clearly brought out so that there would not be any question. There is no evidence to show that we have been credited with the allowance; and without that evidence on the freight bill, we have to assume that they have overlooked it and have not given it to us.

Mr. STAFFORD. I assume that these stakes are abandoned after they are used for one shipment of lumber?

Mr. BABCOCK. Very largely so. In most cases, as I have stated here, they have to be punched and driven into these pockets and wedged in so that they are tight and safe, so that you can not get them out; and usually, for the convenience of the loader, they are chopped off, taken out of the car, and broken up.

Mr. STAFFORD. So the original consignor does not have the use of the stakes again for another shipment?

Mr. BABCOCK. No, sir. Oh, they could be used, I suppose, in some instances; but our investigation and experience shows that they are not used. As a rule, the consignor does not load and reship his lumber. It is consumed.

Mr. STAFFORD. Has any railroad ever provided attachments which could be utilized permanently for shipments of this character?

Mr. BABCOCK. Yes; years ago.

Mr. STAFFORD. That would not be abandoned at the end of the initial shipment?

Mr. BABCOCK. Yes, sir; and it was a part of our contention before the Interstate Commerce Commission that that was entirely feasible, and should be done. We produced at our own expense experimental cars, with stakes that were entirely practicable from the lumber standpoint, and we believed would be from the railroad standpoint. At the request of the railroads we had our case continued before the commission, and our committees representing the railroads and our lumber organizations or lumbermen throughout the country worked for possibly a year and a half or perhaps two years—I do not remember the exact dates—experimenting and trying to produce these stakes.

Mr. STAFFORD. Does that view embody the idea that the cars having these special attachments would be used solely or largely for the shipment of lumber, as in the case of these coke cars and the others that you have described?

Mr. BABCOCK. No, sir; they were stakes of such a nature that they would not interfere with the transportation of other commodities, as they now are employed. That was one of the aims we had in view. We produced stakes that even some of the railroad engineers admitted before our committee were feasible, and they could not find any objection to them. As quick as such a man became known, how-

ever, he was taken off of the committee and another man put on. It soon became apparent that we could not get any relief there, and we went back to the commission and continued our case.

Mr. CARR. Mr. Chairman and gentlemen of the committee, I do not want to interrupt, but I do not want the committee to get the idea that our silence means that we acquiesce in these statements.

The CHAIRMAN. Do you represent the other side?

Mr. CARR. I represent the other side.

The CHAIRMAN. We will hear you later.

Mr. CARR. I do not want to interrupt, but I do not want the committee to get the idea that we assent to those statements.

The CHAIRMAN. I suggest that you do not argue the case at this point.

Mr. BABCOCK. Certainly these staking requirements will not be uniformly and consistently carried out and maintained throughout the United States until such a time as it is done under the master car builders' rules, enforced by the men in authority and at the carrier's expense.

Statistics show conclusively that lumber and forest products are the second largest tonnage, and that the already high freight rates governing them make them the greatest freight-earning commodity, furnishing employment and activity all the year around in an article that is not perishable; further, it is shipped on a class of cars suitable for nearly all other staple commodities, which makes it possible for the carriers to secure tonnage for the same cars both going and coming, traveling east or west, north or south, as the case may be, whereas in the use of specially built coal hoppers, coke racks, etc., the cars all have to be hauled one way empty. Certainly if the carriers find under these conditions the coal and coke business attractive at a much lower rate of freight, the concession we ask will cause them no hardship whatever, because it is clearly shown that the increased capacity of the cars more than twice pays for the equipment.

We ask for your due consideration.

Mr. ESCH. Were the model stakes that you showed before the commission of wood or metal?

Mr. BABCOCK. Both; largely metal stakes, however.

Mr. ESCH. Would they be in excess of a 500-pound allowance?

Mr. BABCOCK. Yes. I might say that the 500-pound allowance probably is only adequate to cover a very small proportion of the stakes that we use. It was simply an average weight that was mutually arrived at between the carriers and the lumbermen.

Mr. ESCH. Where the common carrier supplies the stakes and other equipment, you would not expect to get the 500-pound allowance?

Mr. BABCOCK. Oh, not at all; no, sir.

Mr. RUSSELL. How do you think a car ought to be staked to be properly equipped?

Mr. BABCOCK. Simply so as to comply with the rules that they themselves lay down.

Mr. RUSSELL. What are they?

Mr. BABCOCK. I have the Pennsylvania Railroad rules here.

Mr. RUSSELL. Will you put them in the record?

Mr. BABCOCK. Yes, sir; I will file this book with you, if you would like to have it. In this they state—

Mr. RUSSELL. No; I do not mean the whole book, of course. I mean only that portion specifying the rules.

Mr. BABCOCK. This is a book applying to that matter particularly. It does not all come under lumber, but it gives the rules governing the loading of lumber in open cars.

Mr. RUSSELL. If you could state briefly what is necessary for the proper equipment of the car, it would be better.

Mr. BABCOCK. The requirements in general in our individual practice are these (I do not undertake to give this to you generally, because I can not give you evidence that I can swear by; it is only our practice in the loading of lumber): They substantially say that every length of lumber—every 16-foot load of lumber—shall have on either side of the car 3 stakes fitted into these pockets, as the case may be, and then bound off across the top either with 1 by 4 strips nailed, or with six strands of wire. We have recently adopted almost exclusively in our own practice the use of wire, because of the saving of the lumber, and because it is slightly cheaper, and I think equally as good.

Mr. RUSSELL. How many-pockets are ordinarily put on each side of the car?

Mr. BABCOCK. Generally speaking, I think they try to have 12 on each side. You take lumber from 16 to 20 feet long, and you load two lengths on a car; and any length from 16 to 20 feet, or I might say from 12 to 20 feet, would require 3 stakes, 12 on either side, 3 on either side for one length of lumber. In the case of a 40-foot car you can readily see that you can load two lengths of 20-foot lumber on it.

Mr. TOWNSEND. Do you not mean 6 stakes on each side?

Mr. BABCOCK. I mean 12 stakes in all—6 stakes on each side—3 for each length of lumber.

Mr. RUSSELL. Have you any idea about what it would cost to properly equip these cars—what the expense would be?

Mr. BABCOCK. Yes, sir. It varies in different localities, running from \$1.50 to as high as \$7.50 a car. When it gets above about \$3 or \$3.50 a car, it refers you back to such distributing points as Cleveland or Tonawanda, or some of these points that do not have woods near by, where they can produce the stakes out of the woods as cheaply as we can where we are operating in the woods.

Mr. ADAMSON. Did you say that if the carriers provided these stakes you would not expect to be allowed the freight weight?

Mr. BABCOCK. If they furnished them.

Mr. ADAMSON. Why should you pay freight on a part of their car?

Mr. BABCOCK. We should not, as far as that is concerned. That is a technical question to which I have not given any particular thought.

Mr. ADAMSON. Your contention is that the equipment ought to be furnished as a part of the car?

Mr. BABCOCK. The equipment ought to be furnished; yes, sir.

Mr. ADAMSON. Why should you pay freight on a part of their car?

Mr. BABCOCK. We should not. It should be figured in with their tariff—their weight.

The CHAIRMAN. Mr. Babcock, could these stakes be made permanent?

Mr. BABCOCK. I think so. That is our belief. That is the contention we make.

The CHAIRMAN. Then, is it your position that the railroad company should put permanent stakes on the sides of the cars, so that they could not be removed?

Mr. BABCOCK. I say that they can do that if they find it cheaper than furnishing the temporary stakes. My belief is that if they are required to furnish the stakes, they will solve that problem very quickly themselves.

The CHAIRMAN. I mean, would that be satisfactory to the lumbermen?

Mr. BABCOCK. Absolutely.

The CHAIRMAN. To have all gondola cars provided with six permanent stakes on each side of the car?

Mr. BABCOCK. Yes, sir.

The CHAIRMAN. As a part of the construction of the car?

Mr. BABCOCK. Yes, sir.

The CHAIRMAN. In practice, when are the stakes usually put on the cars—before loading?

Mr. BABCOCK. Yes, sir; they are put on before loading. I have some little photographs here, gentlemen. They are just postal-card photographs, but they will give you a clear conception of that question. They show cars staked after loading and in the process of loading.

The CHAIRMAN. We can not very well put the photographs in the record; hence we should like to ask you questions about the matter.

Mr. BABCOCK. I simply wanted you to look at them.

The CHAIRMAN. When, in practice, are the stakes put on these cars?

Mr. BABCOCK. They have to be put on before the car is loaded.

The CHAIRMAN. You produce these photographs simply to show some cases where they were put on after they were loaded?

Mr. BABCOCK. Yes, sir; and I happen to have one car here that is staked with one of the permanent experimental stakes. That was a very satisfactory stake.

Mr. RICHARDSON. I was not here at the beginning of your remarks; I did not get here in time. But, as I understand, your contention is that the common carriers ought to be required to put these stakes up around each car?

Mr. BABCOCK. Yes, sir; or pay for them.

Mr. RICHARDSON. For the purpose of enabling them to carry more lumber?

Mr. BABCOCK. Yes, sir.

Mr. RICHARDSON. The more lumber they carried, the higher their freights would be, would they not?

Mr. BABCOCK. No, sir.

Mr. RICHARDSON. They would have larger loads; and you think it is to the interest of the railroad to do that, do you not?

Mr. BABCOCK. I think so; yes, sir.

Mr. RICHARDSON. You think it is absolutely to their interest, and the railroads do not think so?

Mr. BABCOCK. It enhances the earning capacity of the car just that much.

Mr. RICHARDSON. Do you not think it is the common run of human affairs that where it is to a man's pecuniary interest to do a certain thing that you are seeking to require him to do, he will go along and do it without any opposition or trouble? Why not, if it is self-interest? Why should you be requiring him to do a thing that it is to his own interest to do? Why will he not promptly do it without being required?

Mr. BABCOCK. I can not answer their part of the argument. All I can do is to show you facts and figures to prove what I have said—that in the practice of our business we do enhance the earning capacity of the cars.

Mr. RICHARDSON. But you are proposing to tell the railroads what is their duty.

Mr. BABCOCK. No; I am asking you to do so.

Mr. RICHARDSON. I understand—through the law; through the Hepburn law.

Mr. BABCOCK. I think the law is plain now.

Mr. RICHARDSON. And they will not do it. Have you made complaint?

Mr. BABCOCK. Yes, sir.

Mr. RICHARDSON. And would not the Interstate Commerce Commission pay any attention to it?

Mr. BABCOCK. They said—and I quoted from their ruling in my paper, which I am filing for your use—that they did not consider it necessary to take the law into consideration.

Mr. RICHARDSON. The Interstate Commerce Commission told you it was not necessary to take the law into consideration as it existed?

Mr. BABCOCK. They did not think it was necessary to take into consideration certain points of law.

Mr. RICHARDSON. And they refused to take up the case?

Mr. BABCOCK. No; they heard our case, but decided part of them against us and part of them for us.

The CHAIRMAN. Have you other witnesses. Mr. Babcock?

Mr. BABCOCK. Yes, sir.

The CHAIRMAN. You have a large number of others?

Mr. BABCOCK. Why, yes; we have a good many people here. We did not care to burden you with a whole lot of stuff. We thought we would give you the clear, concise statements of a few men.

The CHAIRMAN. The only reason I ask the question is that time runs, and if there are others you want to have heard we shall be glad to hear them.

Mr. BABCOCK. Yes, sir; there are four or five people.

The CHAIRMAN. We will give you the morning.

Mr. KENNEDY. Do the railroads charge you the same for shipping your lumber in a box car that they do on a gondola car, after you furnish the stakes?

Mr. BABCOCK. The rate is the same.

Mr. KENNEDY. The rate is just the same?

Mr. BABCOCK. Yes, sir.

Mr. KENNEDY. And that is the gravamen of your complaint?

Mr. BABCOCK. Yes, sir.

Mr. KENNEDY. That they make no allowance to you for the expense you incur in putting the stakes on?

Mr. BABCOCK. That is the idea exactly. We maintain that we are doing it for the railroads, for them alone, for their safety, and that we are enhancing their earning power by doing it; and we say it is a clear case that the railroads should pay for it themselves.

Mr. KENNEDY. How about getting box cars? Is there a good deal of lumber shipped in box cars?

Mr. BABCOCK. Oh, yes; it is done very largely. But there are certain commodities of lumber—good, high-grade, hardwood lumber—for which it is necessary to have box cars, because it would damage it to ship it in open cars. In practice, I think, on the part of the carriers as well as the lumbermen, it requires all of their box-car equipment to supply the trade that must have them.

Mr. KENNEDY. Has there been any complaint among the people in your business that the railroads play favorites as to who shall get the box cars?

Mr. BABCOCK. I do not know; I do not think we have any serious complaint to make along that line at all. We have always found the railroads very friendly.

Mr. RICHARDSON. In that connection let me ask a question. You said you applied to the Interstate Commerce Commission about this matter?

Mr. BABCOCK. Yes, sir.

Mr. RICHARDSON. Claiming that the law now requires the railroads to put these stakes up there? I am asking for information.

Mr. BABCOCK. I realize that, sir.

Mr. RICHARDSON. Do you remember that one of the commissioners said this:

There is a clear distinction which should be recognized and maintained between the obligations which fairly rest upon the carrier and those which it may properly impose upon the shipper?

Mr. BABCOCK. Yes, sir.

Mr. RICHARDSON (continuing):

If a shipper requests a certain kind of car, or if he must have a certain kind of car for his shipment, it is proper that he should be required to secure his shipment upon or within the car by appropriate blocking, staking, or otherwise, and so protect it from damage to itself.

The CHAIRMAN. I might say, Mr. Richardson, that before you came in Mr. Babcock went over all of that matter.

Mr. RICHARDSON. I should like to hear the gentleman explain that.

The CHAIRMAN. He quoted that very paragraph.

Mr. BABCOCK. That is only a part of the commissioner's quotation.

Mr. RICHARDSON. That covers the situation.

Mr. BABCOCK. I quoted that verbatim. I am not hiding anything. We have a clear and concise case.

The CHAIRMAN. The witness had been over that before you came in, Mr. Richardson.

Mr. RICHARDSON. There is no reason why I should not inquire, if I was not here, is there?

The CHAIRMAN. Oh, certainly not.

Mr. BABCOCK. It would be all right to have you go over every word he says, if you have the time.

Are there any other questions, gentlemen, before I retire?

Mr. ESCH. Only one question: I do not know whether you speak by authority as to the shipment of electrical machinery and other machinery or not. Do you mean, by this amendment, to require the common carriers to put in the blocking necessary to keep such machinery in place on the car?

Mr. BABCOCK. I think that is just what Commissioner Clark refers to—that where it is necessary to have a specific kind of a car, the necessary blocking to protect the lading itself should be furnished by the shipper. That is what he says in his conclusion—"to protect it from damage to itself." He makes a clear distinction there.

Mr. ESCH. I did not know whether you cared particularly to be heard on that or not.

Mr. BABCOCK. No; I am not interested in that. Our committee here, gentlemen, simply appear so far as this bill refers to lumber and forest products.

Our next speaker is Mr. Craig.

STATEMENT OF MR. GEORGE F. CRAIG, OF PHILADELPHIA, PA.

Mr. CRAIG. I am here as a manufacturer of lumber, and also as a representative of the National Wholesale Lumber Dealers' Association.

Gentlemen, I shall not take up a great deal of your time. I am here representing the same association as Mr. Babcock. I have simply expanded a little on one of the items Mr. Babcock has mentioned. The figures which I have made up may not be absolutely accurate, but I think they will serve to demonstrate the point which particularly appeals to me, and that is the double standpoint of wise economy and conservation of resources. The present method of equipping such cars is costly to the transportation companies, costly to the shippers of lumber, and wasteful of the public resources.

Mr. TOWNSEND. Mr. Craig, before you go any further, I should like to ask you this question, which at first I did not have time to ask the other gentlemen, and which slipped my mind when I got around to it. When you order a car for the shipment of lumber, do you state that you want an open car or a box car?

Mr. CRAIG. In a few instances we specify the kind of car which we would like to have. As Mr. Babcock has said, we manufacture some kinds of lumber which can not be loaded in open cars on account of their high grade and the danger of being damaged.

Mr. TOWNSEND. What kind of cars would you get if you ordered them without specifying what you wanted?

Mr. CRAIG. We would get both kinds, as the railroad company happened to have the supply.

Mr. TOWNSEND. They will furnish you the open or gondola cars—the flat cars—when you simply order a car for the shipment of a carload of lumber?

Mr. CRAIG. If we order a car without specifying the kind of car we want, they are liable to give us either a gondola or a box car, as they may have them; and as a rule we are thankful to get either.

The average capacity of the freight cars of this country is probably 80,000 pounds. Each gondola or flat car carries a tare weight of about 40 per cent of its marked capacity, say 32,000 pounds. Each box car carries 50 per cent in tare, or say 40,000 pounds, and, inciden-

tally, costs from \$100 to \$200 more to construct than an open car of the same tonnage capacity. The open car can be loaded with, say, 30,000 feet of lumber, weighing on an average 75,000 pounds, while the cubic capacity of the box car limits its carrying power to about 20,000 feet of the same class of lumber, weighing 50,000 pounds. A loaded gondola would therefore weigh, with its contents, about 107,000 pounds and a loaded box car with its contents about 90,000 pounds.

Mr. TOWNSEND. Is the rate per hundred pounds, or whatever the rate is, the same for the open car as it is for the box car?

Mr. CRAIG. Identically the same, sir.

Assuming 7,500,000 pounds to be a fair average train tonnage and 17 cents per 100 pounds to be a fair average rate on forest products, we arrive at the following comparison showing the advantages to be gained by common carriers from transporting lumber on open cars.

A train of gondolas would be made up of 70 cars of 107,000 pounds gross weight each, yielding 5,250,000 pounds of revenue tonnage, which, at 17 cents per 100 pounds, would produce \$8,925 train revenue.

A train of box cars would be made up of 83 cars of 90,000 pounds gross weight each, yielding 4,150,000 pounds of revenue tonnage, which at the same rate of freight would produce \$7,055 train revenue.

With the same cost for motive power and maintenance there would therefore be an advantage to the transportation company in train revenue alone by the use of flat and gondola cars of \$1,870 for each train load of forest products transported, representing an increase of more than 25 per cent in the earning capacity of each locomotive and crew and a saving of two-thirds of the cost of equipping the cars used with the necessary permanent stakes and binders, provided, always, that the rates charged to shippers are fair and reasonable and represent the actual cost plus only a reasonable profit to the shareholders.

Mr. TOWNSEND. How many cars were there in that gondola train?

Mr. CRAIG. Seventy.

The CHAIRMAN. What you are trying to do now is to demonstrate how much more profitable it would be to the railroad companies if they would operate their business in accordance with your views?

Mr. CRAIG. Yes, sir; that they could well afford to equip these gondola cars with stakes in view of the saving that would accrue to them.

The CHAIRMAN. Do you not think it would be more profitable to us for you to tell us the reasons why we should make the change and require them to furnish them? It is not our business to operate the railroads, or to find out which is the most profitable way to furnish them. They have men employed for that purpose.

Mr. CRAIG. No, sir.

The CHAIRMAN. And before you get through I wish some of you would tell us the conveniences as to this method of transportation—as to who, in the long run, it will profit as a matter of convenience.

Mr. CRAIG. As a matter of convenience?

The CHAIRMAN. Staking the cars and all that sort of thing.

Mr. CRAIG. Mr. Chairman, I simply endeavored to bring out in these points the fact that we are not unfair to the railroad companies in our contention; that we are not seeking to throw a burden on them for our own advantage.

The CHAIRMAN. Oh, I understand that. I am not taking any exception to your argument.

Mr. CRAIG. In getting a benefit for ourselves we also wish to be fair to them. I might say, by way of explanation, that at one time in my life I had the honor of being president of a railroad company. It was a very short road.

The CHAIRMAN. Did you adopt this method when you were the president of a railroad company? You were endeavoring, of course, to do the most profitable thing for the railroad company. Did you provide these car stakes?

Mr. CRAIG. Our car equipment was very limited; but I will say that the few cars that we had which were used entirely in local business on our own line we did equip for our shippers.

The CHAIRMAN. With car stakes?

Mr. CRAIG. With car stakes, and in some cases with racks.

The CHAIRMAN. It is a wonder you did not stay in the railroad business.

Mr. CRAIG. I could not make any money out of it.

The CHAIRMAN. Perhaps that was the reason. [Laughter.]

Mr. S. C. NEALE. That was because you bought the stakes.

Mr. CRAIG. To resume what I was saying: In addition to this, the investment in equipment shows a difference in favor of the train of gondola cars of about \$15,000. While it has been estimated that at present only 50 per cent of lumber shipments are loaded on open cars, I believe that fully 80 per cent would be so loaded should the transportation companies consent to provide the proper equipment.

As a matter of fact, in our own particular business, as to at least 80 per cent of our lumber, it is immaterial whether it is loaded in box cars or open cars. I should say that the majority of the cars which are furnished us are box cars, because it is more convenient for the railroads to give them to us. And as to the question which was raised here as to the cost of loading the two classes of cars, I will say that our own yard superintendent always prefers to load box cars, and insists that he can do it at less cost than he can an open car.

Mr. RICHARDSON. Right there may I ask you a question?

Mr. CRAIG. Yes, sir.

Mr. RICHARDSON. You ship lumber in both open and closed cars, do you not?

Mr. CRAIG. Yes, sir.

Mr. RICHARDSON. When you ship it in a closed car, is it not a different character of lumber—more valuable lumber, which you do not want to expose to the weather?

Mr. CRAIG. We ask for closed cars for that class of lumber; but we nevertheless ship in closed cars all classes of lumber, including even the very cheapest grade that we make. Frequently, on account of our inability to obtain gondola cars, we ship it in closed cars.

Mr. RICHARDSON. Is there any difference in the carrier's charges when you use a closed car and when you use an open car?

Mr. CRAIG. None whatever, sir; the rate is absolutely the same.

Mr. RICHARDSON. Is there really any difference in the character of the lumber that you ship, then, in an open car and a closed car?

Mr. CRAIG. There is none in a great many cases.

Mr. RICHARDSON. You use the same?

Mr. CRAIG. Except, as Mr. Babcock has stated, that there are some very high-priced grades of lumber that for protection we ship in the closed cars.

Mr. RICHARDSON. One question further: When you ask for a car, and do not designate what kind of a one you want, and a railroad furnishes you with an open car, do you think they ought to equip that with the standards?

Mr. CRAIG. I do; yes, sir.

Mr. RICHARDSON. When you have not designated the car that you want?

Mr. CRAIG. If I have not designated the kind, and it is convenient for the railroad company to give me an open car—

Mr. RICHARDSON. But how do you know it is convenient? How do you know about their business?

Mr. CRAIG. If you had shipped lumber for a number of years you would know that, especially in our case.

Mr. RICHARDSON. Then, when you do not designate to the common carrier the kind of a car that you want, and it is not convenient to the railroad to furnish you with a closed car, and they consult their own convenience and furnish you an open car, you contend that the railroad ought to put those stakes there, for your own interest?

Mr. CRAIG. I think they should.

Mr. RICHARDSON. That is all I want to know.

Mr. SIMS. As a matter of fact, do you not usually designate the kind of cars you want when you ask for them?

Mr. CRAIG. No, sir; we never do, because we have so much difficulty in obtaining any kind of cars. The supply is so short on the Chesapeake and Ohio Railroad, on which our mill is located, that we are thoroughly thankful to get whatever kind of a car they can give us; and we take them just as they come along, and use them to the best advantage for ourselves. Of course, for some shipments that we make we are obliged to have gondola cars, on account of the length. We can not get long lumber into a box car, and we can not get very heavy lumber into a box car; and we have some little high-grade lumber that we decline to ship on open cars.

Mr. SIMS. The reason of my inquiry was that I naturally supposed that in making a request you at least indicated the kind of cars you preferred.

Mr. CRAIG. Not unless we have some reason for requiring a special kind. If we are shipping high-grade lumber, we request the box cars; but if we have long lumber, we request the gondola cars. Otherwise, we take whatever they give us.

Mr. KENNEDY. Have you any computation to give us as to exactly how much more it costs to ship in a gondola car than it does to ship in a box car?

Mr. CRAIG. It costs us about \$3.50 a car to equip it.

Mr. KENNEDY. How much would that be a thousand feet?

Mr. CRAIG. An open car will carry from twenty-five to thirty thousand feet. That makes it probably twelve or fifteen cents a thousand.

Mr. KENNEDY. That would apply to each shipment, no matter how long or short it might be?

Mr. CRAIG. Yes, sir; that would apply to each shipment. Nearly all of our lumber is short lumber, and we load two lengths in a car.

Mr. KENNEDY. I refer to the distance of haul.

Mr. CRAIG. Oh, short haul and long haul—yes, sir; that would be the same thing.

Mr. SIMS. Which is more expensive to the lumberman—to load the box car or the open car?

Mr. CRAIG. Our yard superintendent maintains that he can load a box car cheaper than he can an open car. He has argued that with me; he has been in my employ for fifteen years, and that has been his continual argument. He always prefers to load the box cars when he can get them. There are times on our division when we are not able to get any gondolas. There are other times when it seems to be almost impossible to get box cars.

Mr. KENNEDY. Does your superintendent figure into the cost of loading the gondola the cost of equipping it?

Mr. CRAIG. No, sir; the mere labor of placing the lumber on it. As Mr. Babcock has said, the box car has a fixed limit to which you must load. With the gondola car, however, you must be careful, in placing it at the sides, not to spring the stakes out, and you must be careful, in placing it at the ends, not to let it overhang so as to cause any risk to the train crew; you must have it provided with steps, so that they can get up to the top of the load. There are a good many points which you have to be careful about in adjusting the load to the gondola car, and which can not be done quite as quickly as you can push lumber into a box car where the sides form the limits.

The testimony introduced before the Interstate Commerce Committee on this subject proved that the average cost to shippers of equipping with stakes and strips in accordance with master car builders' rules is \$3.50 per car, or a total cost per annum to the lumber shippers of the United States, on the present estimate of the number of cars so equipped, of over \$6,000,000.

As the movement of lumber is practically all in one direction, that is, from the forest districts to the thickly settled areas, the temporary stakes now used are of no commercial value when the car has been unloaded, except possibly a small sum for fire wood, an almost inappreciable percentage of their original cost, and as the rules in force require the use at low estimate of 150 feet of lumber per car, there is being annually wasted in the United States alone, no less than 250,000,000 feet of lumber from the natural resources of the people at large, resources which every effort is now being made to carefully safeguard and conserve.

We therefore ask that in the interest of all parties concerned the bill in favor of which we appear shall have your most careful consideration.

Mr. ESCH. How do you claim that to be a waste? If the railroad company had to furnish the stakes, it would still make a demand upon the forests.

Mr. CRAIG. I think our idea is, rather, that the railroad companies shall equip these cars with permanent iron stakes. There have been several patterns of stakes devised which can be dropped down out of the way when the car is not in use for lumber, permitting it to be used for almost any other commodity for which it might be needed, and which can be brought up into place and adjusted when the load of lumber is put on. I refer to iron stakes, which would last forever.

Mr. KNOWLAND. Are there any roads that have permanently equipped their cars with these stakes?

Mr. CRAIG. There are no roads that have adopted permanent stakes, but there are some cars on which they have been adopted. When we had our contention before the Interstate Commerce Commission, experiments were made on some cars with one or two of the patterns of stakes which we suggested, and they worked very satisfactorily.

Mr. RICHARDSON. What is the cost to the railroad for the permanent equipment of the average car?

Mr. CRAIG. I think it costs somewhere between thirty and forty dollars per car to equip them.

Mr. RICHARDSON. How many cars are there in the United States engaged in railroad service? Do you know?

Mr. CRAIG. No, sir; that is a figure I can not give you.

Mr. RICHARDSON. You are not informed about that?

Mr. CRAIG. No, sir; I am not informed as to that. A question was asked here as to whether the railroad companies had ever furnished this equipment.

Mr. KNOWLAND. Outside of your own road?

Mr. CRAIG. Outside of our road; yes, sir. A number of years ago—it may have been twenty years or more since they disappeared—the railroads had a class of cars equipped with permanent wooden stakes. There were no binders, but simply the permanent wooden stakes. Some of you may recollect them. They dropped down on the side of the car; they had a slot in the stake that fitted over a bolt, and when the cars were not in use the stake dropped down on the side of the car.

The CHAIRMAN. When you say they "dropped down," what do you mean?

Mr. CRAIG. I mean they assumed a horizontal position alongside of the car.

The CHAIRMAN. Would they not drag?

Mr. CRAIG. No; they did not drag.

Mr. RICHARDSON. Just let me call your attention to this: I have here a pamphlet which says that there are a little over 1,000,000 cars in use in the United States. If you put \$30 or \$40 on each one, you would have a pretty good sum of money that the railroad companies would have to pay if your bill became a law.

Mr. CRAIG. Yes, sir; that is true.

Mr. RICHARDSON. They would have to pay \$30 or \$40 a car for a little over 1,000,000 cars.

Mr. CRAIG. We argue that the fact that a smaller number of cars would be necessary to carry the same amount of freight would more than compensate for that investment.

Mr. RICHARDSON. I simply get that from the Interstate Commerce Commission's report. That is the estimate they make of it.

Mr. KNOWLAND. Was the permanent equipment that some of them adopted some time ago satisfactory?

Mr. CRAIG. It was very satisfactory while we used it. We had to furnish the stakes to go across the top of it; and, of course, being wooden stakes, and using these temporary strips, we had to drive nails into the heads of them. I do not know what the effect of that would be after some months or years. So that it was probably not as satisfactory as an iron stake with a permanent device for binding

would be. Nevertheless, we contend that that rather upsets the argument of the chairman of the Interstate Commerce Commission that it has been the universal custom for the shippers to furnish the stakes. As much as twenty years ago it was not the custom for the shippers to furnish the stakes.

The CHAIRMAN. Is it necessary to fasten these stakes at the top?

Mr. CRAIG. They must be bound together, either by 2 strips across each stake—they require 1-by-5 strips with us—or by 4 or 6 strands of No. 8 iron wire.

The CHAIRMAN. Do you contend that the railroads should merely furnish the rope or should rope them in?

Mr. CRAIG. I presume that we would have to furnish the labor of adjusting these stakes and adjusting whatever permanent binder they furnished, the same as when we load a box car now, we shut the car door.

The CHAIRMAN. I am trying to get at it as a matter of the language of legislation. The provision in the present bill requires the railroad company to furnish the ropes and wires and other fasteners. How are they to be furnished? Are they to be attached to the car or simply so much rope furnished to a shipper?

Mr. CRAIG. My impression is that the type of permanent stake with which we experimented had a device for binding it off. I shall have to ask Mr. Babcock regarding that. Did that permanent stake, Mr. Babcock, have a device for binding across the top?

Mr. BABCOCK. Some of them did and some of them contemplated the continuation of the wire.

Mr. CRAIG. I think some of them contemplated having chains with a turn-buckle or a clevis device in the center to draw them in.

Mr. SIMS. For information, I want to ask a question of Judge Richardson. Judge, did I understand you to say that there were over a million cars?

Mr. RICHARDSON. Yes, sir.

Mr. SIMS. Open cars?

Mr. RICHARDSON. No; over a million cars in service. I did not say whether they were open or closed cars. They do not make any distinction.

Mr. SIMS. I simply wanted to get the information. Does this bill contemplate requiring this addition to all cars, whether they are box or open or otherwise?

Mr. RICHARDSON. I do not know.

Mr. SIMS. Your argument indicated that.

Mr. RICHARDSON. I do not know anything about that. I am not asking that. I am just asking him how many cars there are. Do you know how many open cars there are?

Mr. CRAIG. No, sir; I do not.

Mr. RICHARDSON. He does not know anything about it.

Mr. SIMS. What does the Interstate Commerce Commission say?

Mr. RICHARDSON. That there are a little over a million cars in service.

Mr. SIMS. But not open cars?

Mr. RICHARDSON. As I told you twice, the report does not say.

Mr. SIMS. But you asked the question in a way that implied that an expenditure of thirty or forty dollars each would have to be made on more than a million cars, which would be a great sum.

Mr. RICHARDSON. I did ask that question, but I should like you to answer this one if you can.

Mr. SIMS. That was given as information, Mr. Chairman, and I want to be correct about it.

Mr. RICHARDSON. I should be very glad to have the gentleman give any information he can. The gentleman on the stand can not give it. If he can do it, I will be glad to hear it.

STATEMENT OF MR. ROBERT G. KAY, OF PHILADELPHIA, PA.

Mr. KAY. Mr. Chairman, I shall not take more than ten minutes of your time. I represent the Philadelphia Wholesale Lumber Dealers' Association, and am also a shipper of lumber. I am going to say a few words on the economic standpoint of forest conservation. As most of our shipments come from West Virginia, I will speak from a West Virginia standpoint.

A gondola car loaded in West Virginia makes a trip to New York or Jersey City or Baltimore every three weeks. In other words, it makes 16 round trips in a year. Our cost of equipping a car with stakes, binders, nails, etc., is \$4 a car. Sixteen trips represents \$64 a year. The railroad company hauls 500 pounds free. The average freight is 19 cents; or we will call it 20 cents, for round figures, to make it a dollar. They lose a dollar on what they haul free on every trip; they give to nobody or anybody \$1 a car, making \$16 that they lose in a year. The weight of the stakes that we put on each of those cars is over 1,000 pounds. The consequence is that we put on the stakes and pay freight on 500 pounds for which we do not get one cent, which costs us a dollar. That makes another \$16 in a year—the total of which (16 trips at \$4 for the stakes) is \$64. Sixteen trips on which we have to pay \$16, and 16 trips on which the railroad loses \$16 make a total of \$96 a year on each and every gondola car so used.

The average cost of a gondola car is \$1,000. The average life of a gondola car as it is made to-day is ten years. In ten years' time we actually pay out \$960, equaling almost the original cost of the car.

I ask you, gentlemen, from an economic standpoint, would anybody in any business carry on his business in such a manner?

The CHAIRMAN. Can you see no difficulty with your figures?

Mr. KAY. I do not see anything the matter with them, because they are actual facts.

The CHAIRMAN. They seem so illogical to me that I should think anyone could find fault with them.

Mr. KAY. If the gentlemen from the railroad company will only agree with us, we are perfectly willing—

The CHAIRMAN. Your proposition is that the railroad companies now give you 500 pounds on account of some stakes which you furnish?

Mr. KAY. Yes, sir.

The CHAIRMAN. And they lose that freight?

Mr. KAY. Yes, sir.

The CHAIRMAN. And they would make that up, according to your proposition, by carrying the entire weight of iron car-stakes free?

Mr. KAY. Yes, sir; but you understand—

The CHAIRMAN. They would carry that much more free; that would be all.

Mr. KAY. That is true. But, you understand, from an economic standpoint, the steel stakes that would be put on a car would cost from \$30 to \$40. They would last during the life of the cars.

The CHAIRMAN. I am talking about the freight. Your proposition was that the railroad companies lost \$16 a year freight by carrying 500 pounds of car stakes free.

Mr. KAY. Yes, sir.

The CHAIRMAN. You then proposed to have them make that up by compelling them to carry a thousand pounds free.

Mr. KAY. I do not know that the steel stakes would weigh a thousand pounds.

The CHAIRMAN. I assume that a steel stake would weigh as much as a wooden stake.

Mr. KAY. The wooden stakes weigh more than a thousand pounds, because we make them out of beech, and we have to put twelve on each car.

The CHAIRMAN. Of course, I do not think that is any argument one way or the other.

Mr. KAY. The argument is simply this: That for \$30 or \$40 added to the cost of each gondola car the railroad company would stop the loss of practically \$960 in the life of the car. To give you a practical illustration of what the railroads are willing to do toward facilitating the handling of special commodities outside of lumber, I will say that last year the Western Maryland Railroad received 500 new 40-foot gondola cars. Shortly after receiving these cars the demand for coke increased to such an extent that they sent 200 of these cars to their own shops and equipped them with coke-racks at an expense of \$57 a car. In other words, they expended \$57 on each car to enable them to haul a commodity (coke) on which the revenue to Pittsburg is just one-half of what it is on lumber. That is, the rate on coke to Pittsburg is \$1.20 per ton and the rate on lumber is \$2.40 per ton. At the same time they destroyed a large percentage of the earning capacity of each individual car, because the cars so equipped with coke racks could not be used for any commodity except coke, plastering lath, or bark. They also lost the possibility of getting any return loads from the Pittsburg district. I am talking now only from the economic standpoint—on the subject of waste. Mr. Craig has told you the amount of money that the lumbermen expend and throw away annually on these wooden temporary stakes that are placed on a car and burned when they reach destination, or sold for firewood, or utilized in any possible way, as bolsters under lumber piles, or in any way that a consumer or a retail dealer can handle them to the best advantage to himself.

The CHAIRMAN. How many feet of lumber are there in the average car stakes of one car?

Mr. KAY. It requires 240 feet for the staking of a 40-foot car in our locality.

The CHAIRMAN. What becomes of those car stakes?

Mr. KAY. For instance, suppose we ship a car to Washington. I see that Mr. Galliher is present; he is a retail lumber dealer here in Washington. We ship a carload of lumber to him and these stakes are on the sides of the car. As Mr. Babcock has said, the

pockets in the car are oftentimes 3 by 4, whereas the Master Car Builders' standard is 4 by 5. The stake has to be driven into the car and oftentimes can not be gotten out, and oftentimes the lumber employee will take an ax and just chop the thing off the car, or break it up in any way at all to get the lumber off. I believe that nine times out of ten it is used for firewood or blocking.

The CHAIRMAN. They sell it to us for firewood at \$20 a cord.

Mr. KAY. I do not know about that.

The CHAIRMAN. But that does not help you at all, I suppose. They do not pay you for it.

Mr. KAY. No; we lose the value of it. It is an absolute loss to us. We have to saw these stakes or standards out of good, strong timber.

The CHAIRMAN. What kind of wood do you use?

Mr. KAY. We use beech.

The CHAIRMAN. Do you use pieces that are not worth much for anything else, or do you use good lumber?

Mr. KAY. Oh, no. These standards usually have to be 9 feet long; sometimes 8 feet long.

The CHAIRMAN. What is their size?

Mr. KAY. It varies according to the height of the car, you may say.

The CHAIRMAN. Give us some idea of their size.

Mr. KAY. They are 4 by 5 inches in cross section, 8 or 9 feet long, and have to be sawed out of good, strong timber. It is not wise to use a bad piece of timber on the side of a car to hold a load of lumber 8 feet high. It is detrimental to you and to the railroad. It has to be done right.

The CHAIRMAN. Are the stakes usually cut out of logs or lumber that can be used profitably otherwise for sawing?

Mr. KAY. Yes, sir; yes, sir. We could sell the same lumber for other purposes just as well as we could saw it up into 4 by 5 standards; yes, sir.

The CHAIRMAN. What is beech lumber worth?

Mr. KAY. Beech lumber is worth \$15 at the mill. Of course, as Mr. Babcock has said, the cost is different in different localities. It varies from \$1.50 to \$7.50 a car, as the testimony before the Interstate Commerce Commission will prove. In some localities it will only cost a dollar and a half.

The CHAIRMAN. I suppose that depends on the value of the rough lumber?

Mr. KAY. At the point of shipment.

The CHAIRMAN. At the point of shipment?

Mr. KAY. Yes, sir. The cypress country, down in Louisiana, is, I think, the most expensive place. They have to use good cypress there that otherwise would go into \$40 lumber.

The CHAIRMAN. Is there any place where the consignee or the receiver of the lumber allows anything on account of the stakes?

Mr. KAY. I have been shipping lumber for thirty years, although I am a young man, and I have never yet gotten a cent for a standard.

The CHAIRMAN. I understand that; but do you know whether there is any place where there is any allowance made?

Mr. KAY. I never heard of such a place; no, sir. I have never heard of a place where they pay for the standards.

The CHAIRMAN. What do you say as to the matter of fastening these stakes?

Mr. KAY. That is getting a little intricate. Individually—I am speaking now not as a member of this committee, but individually—

The CHAIRMAN. We are trying to get information. We do not care whether people speak as members of committees or otherwise.

Mr. KAY. Individually, if the railroads would put stakes on their cars, I believe we would be willing to furnish the wire to tie them across. It has been developed that a practical stake can be made and has been made that is collapsible, so that after the load is taken off the stake collapses inside of the car. The car can be used for coal, broken stone, sand, or any rough commodity (no matter what it is) that can be loaded in a gondola car just the same as if the stake were not there, as is done to-day.

Mr. TOWNSEND. For what purpose can a flat car be used for bringing back a carload?

Mr. KAY. Very few purposes. The Atlantic Coast Line, the Southern Railway, the Seaboard Air Line, the Louisville and Nashville, and all the southern roads have more flat cars than any other group of railroads in the United States. The loads going south on flat cars are very limited in extent. I do not suppose 50 per cent of the flat cars go south loaded.

Mr. TOWNSEND. Somebody argued a little while ago—I think you did—that it was to the advantage of the railroads to haul lumber in the open or gondola car, for the reason that it can bring back a carload.

Mr. KAY. That was Mr. Babcock. He spoke of a gondola car. You spoke of a flat car.

Mr. TOWNSEND. Then a flat car could not be used for that purpose?

Mr. KAY. Not to the same extent that a gondola car can; no, sir.

Mr. KENNEDY. Suppose the committee should take kindly to your general contention: Would not the best way to adjust this matter of difference between you be to empower the commission to make an allowance to you for putting stakes on your cars, to come out of the freight or the charge made for the hauling?

Mr. KAY. That would cover it; yes, sir. That would not do away with the waste.

Mr. KENNEDY. It might stop the waste; it might be a means of getting the railroads to equip their cars.

Mr. KAY. I believe that if you recommended such a thing as that, it would not be three years before 50 per cent of the gondola equipment of the country would be equipped with permanent steel stakes.

Mr. RICHARDSON. As I understand, all of you in the lumber business proceed upon the idea that this exception ought to be made by the common carriers of the country in favor of the lumber interest, on account, as we all know, of the general value and the general use of lumber throughout the country. It is because of the importance of your trade that you are asking the railroads to perform this special favor for you at their expense. What I am getting after is this: There are other great interests in the country besides lumber. Suppose each one of the special interests were to come here and re-

quire the common carriers to comply specially with their interests and their behests—would that be fair?

Mr. KAY. I am not a judge as to that; but I will simply say this in answer to your question: Our business is the largest revenue producer that the railroads have to-day.

Mr. RICHARDSON. I understand that you are basing it on that.

Mr. KAY. And we are entitled to this, because it is known (as Mr. Babcock said) that the cattle men have a car, the grain men have a car, the oil men have a dunnage allowance, and the sugar men have a dunnage allowance. We give them a commodity that is not perishable, that they sidetrack whenever they please, that is a revenue producer beyond any other commodity in the country.

Mr. RICHARDSON. When you say a revenue producer you refer to domestic sale?

Mr. KAY. Yes; in domestic sale.

Mr. RICHARDSON. Not for foreign exportation, or anything of that kind?

Mr. KAY. No; I mean revenue produced in this country.

Mr. RICHARDSON. For instance, coal is a wonderful revenue producer.

Mr. KAY. It is; but it pays a low freight. I have told you that the Western Maryland Railroad—and they are clever people; I have not anything to say against them—went to the expense of \$57 a car to equip their cars to haul a commodity at half the rate that we were giving them.

Mr. RICHARDSON. As I understood from you a few minutes ago, the character as well as the value of the lumber that you ship differs very materially. Some of it is worth \$40 a thousand, and some of it \$12 or \$13 a thousand?

Mr. KAY. It was Mr. Babcock who was talking then.

Mr. RICHARDSON. Somebody said so to us.

Mr. KAY. High-grade lumber must be loaded in box cars, or it deteriorates when exposed to the weather. It is absolutely necessary, in my judgment, to have from 10 to 20 per cent of box cars.

Mr. RICHARDSON. You can not put as much of that high-grade lumber in a closed car?

Mr. KAY. No.

Mr. RICHARDSON. Because its length prevents it?

Mr. KAY. No; you can not do it.

Mr. RICHARDSON. And when you have that kind of lumber that you want to ship, you let them know that you want a closed car, do you not?

Mr. KAY. When we get that high-grade lumber, and have to ship it, it simply means that we have to have a box car to load it in.

Mr. RICHARDSON. I will ask you the same question that was put to the gentleman who spoke before you: When you notify a common carrier—a railroad—that you have lumber to ship, and do not say whether you will need an open car or a closed car, do you think that when the railroad furnishes you an open car at its own convenience, it ought to be required to put these stakes in and pay for them?

Mr. KAY. We do.

Mr. RICHARDSON. Notwithstanding the fact that you omitted to tell the common carrier what you wanted? You think that is so, do you?

Mr. KAY. Judge, if you were in active business—

Mr. RICHARDSON. I am talking about common sense now.

Mr. KAY. If you were in active business, except during 1908, you would be glad to get anything on wheels that would carry lumber. That has been true except in 1908; the situation was such that we were glad to get anything.

Mr. RICHARDSON. I agree with you about the vast interests of your trade, and everything of that kind—the product you are engaged in producing.

Mr. KAY. You know what it is.

Mr. RICHARDSON. But there are other things in this country besides lumber.

Mr. KAY. Oh, that is true.

The CHAIRMAN. There is just one thing I should like to ask you, Mr. Kay, or whoever may appear. You have so far contended that it is practicable to put permanent car stakes on a car; and apparently you have proceeded upon that theory.

Mr. KAY. Yes, sir.

The CHAIRMAN. I am not informed as to whether it is practicable or not, and I presume the committee is not. If it should appear to the committee, after investigation, that so far it is not known to be practicable to put permanent car stakes upon cars, would you then say that it would be for the interest of the general public to require the railroad companies to furnish temporary car stakes, or for the shipper to furnish the temporary car stakes? I do not care whether you answer that or whether Mr. Babcock or some other gentleman wants to answer it.

Mr. KAY. I think perhaps Mr. Babcock had better answer that.

FURTHER STATEMENT OF MR. F. R. BABCOCK.

Mr. BABCOCK. Our contention, Mr. Chairman, is that it is really not the lumberman's business to provide this stake. Nevertheless, in our contention before the Interstate Commerce Commission we spent thousands of dollars to provide one and demonstrated to our own satisfaction that we could make and produce a stake that was adequate in every sense of the word to answer our purpose and relieve us of what we now ask to be relieved of.

Mr. RICHARDSON. But you want the railroads to pay for it.

The CHAIRMAN. I know; but this is the point I want to direct your attention to: You think the railroads ought to furnish the stake?

Mr. BABCOCK. Certainly.

The CHAIRMAN. The railroads, on the other hand, think that you ought to furnish the stake. The interest of general legislation is, in the end, to make such a requirement that it shall result in benefit to the public at large; not especially to the lumbermen or the railroads.

Mr. BABCOCK. But we want you, after a study of this question, to rule as to what you think shall be justice.

The CHAIRMAN. What I want to know is this: If the committee should think, in the end, that it is not practicable now to say that the railroad companies must furnish permanent stakes, is it your opinion that it is easier and cheaper for the railroad companies to furnish and equip the cars with temporary stakes, or for the shippers to do it?

Mr. BABCOCK. There is not any question that for immediate relief they can furnish the temporary stakes much cheaper.

The CHAIRMAN. Who can?

Mr. BABCOCK. The railroads, or whoever furnishes them; but in the long run—

The CHAIRMAN. Who can furnish them much cheaper—the railroad companies or the shippers?

Mr. BABCOCK. One can furnish them as cheaply as the other, as far as that is concerned, because if the law provided that the railroads must furnish them I assume that they would simply make their arrangements with the lumbermen to furnish them at cost and charge for them or make an allowance.

The CHAIRMAN. Then we would allow the railroads to ask the shippers to furnish the equipment, and then the railroads would pay for it. That might open a very wide field for rebates.

Mr. BABCOCK. That is true; but at the same time it is a matter of justice. They furnish special equipments for all other commodities that are in our line; why should they not furnish them for ours?

The CHAIRMAN. I am not arguing the question.

Mr. KENNEDY. If any allowance should be made for stakes, I am of the opinion that it should be fixed by the Interstate Commerce Commission.

Mr. BABCOCK. I think so myself.

Mr. SIMS. I should like to ask the gentleman a question. So far as the general public is concerned (that means the consumer of lumber, as I understand; the public consumes the lumber), would it make any difference to the public whether the lumbermen paid for the stakes or whether the railroad people paid for the stakes? Would not they, in the end, have to pay it anyway, being the purchasers of the lumber? It would be charged by the railroads as freight, and it would be charged by you people as expense of manufacturing.

Mr. BABCOCK. As a matter of fact, we furnish it now without any compensation whatever.

Mr. SIMS. But do you not figure it in as a part of the expense of your business?

Mr. BABCOCK. It actually does figure in; of course.

Mr. SIMS. And of course you have to have a profit on your entire investment?

Mr. BABCOCK. We would like to have; but we have not been able to get it, I am sorry to say, in the last few years.

Mr. SIMS. That is an incident due to stress of conditions?

Mr. BABCOCK. Yes, sir.

Mr. KENNEDY. If you live on a road that has very little besides gondolas, you have to compete with other lumber carriers that live on roads that have box cars?

Mr. BABCOCK. Yes, sir.

Mr. KENNEDY. So that the man that gets gondolas or open cars is up against it to the tune of about \$3 on every car in his freights?

Mr. BABCOCK. Yes, sir.

Mr. KENNEDY. I suppose your interest is principally to get as cheap freight as your competitor?

Mr. BABCOCK. That is true; yes, sir; and the rate is identically the same whether you get a box or a gondola car. The cost of loading is

practically the same; and every dollar we have to spend to equip that car, we claim, is an unjust requirement on the part of the railroads.

Mr. KNOWLAND. Do you not think that if the railroads were required to furnish the stakes their cost would come out of you eventually?

Mr. BABCOCK. I do not know why it should. We are paying them freight enough, so that they can well afford to give us the equipment that we ask for, or that is required.

Mr. RICHARDSON. I do not know that I understand you distinctly in answer to a question by Mr. Sims, on the other side of the table. Did I understand you to say that lumber is not being sold now at a profit throughout the country?

Mr. BABCOCK. A great deal of it is not being; yes, sir.

Mr. TOWNSEND. Just upon that point, Mr. Babcock, let me ask this question: As I understand you, your contention is that the railroads are obliged to furnish suitable equipment for the hauling of lumber? That is your contention, is it not?

Mr. BABCOCK. Yes, sir.

Mr. TOWNSEND. Is it possible to haul lumber on those flat cars or gondola cars without these stakes?

Mr. BABCOCK. It is absolutely impossible to do so and get on the amount that their stipulation requires us to get on. You see, we have to put 34,000 pounds or more on a car, or pay for 34,000 pounds; and you could not get a quarter of that on, and it would not travel with any safety if it were not properly stacked.

Mr. BABCOCK. What is your pleasure? Will this end our hearing?

The CHAIRMAN. I want to ask you whether you desire to be heard further or not?

Mr. BABCOCK. We have four or five very competent men here that will get up and give you this evidence; or if you will give us a few days and desire to end the hearing now, we will put it into a brief and file it for your consideration—whichever will be to your pleasure. We can not get through in ten minutes, I know.

The CHAIRMAN. I do not know whether we can go ahead this afternoon informally or not. We shall have to be on the floor of the House; at least, I shall have to be and most of the members of the committee.

Mr. RICHARDSON. I should like to suggest just here, Mr. Chairman, if you please, that I know our colleague, Mr. Esch, is always correct and accurate about these matters; I give him full credit for that; but I should like him, when the committee meets on this subject again, to give us an estimate of the cost of equipping these cars at \$30 or \$40 a car.

The CHAIRMAN. If either one of the gentlemen will refer to the last report of the Interstate Commerce Commission, which has been sent to both of them, they will find an exact statement of the number of cars.

Mr. RICHARDSON. I should like very much to have that information specifically before the committee.

Mr. ESCH. I will give you the latest information I have.

The CHAIRMAN. Would you prefer to go ahead this afternoon for a while with witnesses?

Mr. BABCOCK. I think we would, Mr. Chairman, if we could just as well, although I assume it is immaterial. These men have their

statements. We can put them in writing and file them for your consideration, if you prefer—whichever you wish.

Mr. RICHARDSON. Mr. Chairman, as long as they say it is immaterial it seems to me that we had better let them file the papers.

Mr. TOWNSEND. I think they might just as well come back this afternoon. There would be some of the committee here, and what is said will all be taken down anyway, and we could go on with the examination of those who wish to come here.

Mr. BABCOCK. I think perhaps it would be better to do that, because we have men here from New Orleans and from Chicago.

The CHAIRMAN. Without objection, then, the committee will meet informally at 2 o'clock to continue the hearings to hear gentlemen in favor of the bill. To-morrow morning, I assume, the railroad people will be heard in opposition.

Mr. RICHARDSON. I hope, Mr. Townsend, according to your suggestion, that the papers will be filed anyway, even if the gentlemen are examined. That will give some of us who can not always attend all the time the opportunity of reading the papers.

The CHAIRMAN. The hearings will be printed from day to day, as rapidly as they are gotten out by the stenographers.

Without objection, the committee will stand in recess until 2 o'clock.

(The committee thereupon took a recess until 2 o'clock p. m. of the same day.)

AFTERNOON SESSION.

The subcommittee met at 2 o'clock p. m., Hon. F. C. Stevens presiding.

STATEMENT OF MR. SAMUEL A. KENDALL, OF PITTSBURG, PA.

Mr. KENDALL. Mr. Chairman and gentlemen of the committee, I will be very brief. There are three classes of cars in which lumber is loaded. One class is the box car, the second class is the flat car that has no sides at all, and the third is the gondola car that has sides all the way from a foot to 3 feet high. It is the flat car and the gondola car that require staking every time a carload of lumber is shipped on them. We are not here asking any special favors; we are simply here contending as shippers of a great commodity for what the railroads voluntarily furnish to all other classes of shippers, and that is, cars entirely equipped to receive the shipment or the load. In the shipment of grain the railroads not only furnish a box car, but furnish temporary grain doors to put in the doors of the cars to hold the grain. In the shipment of coal specially built coal cars are constructed, so that there is no expense to the coal operator in equipping his car. In the shipment of cattle and sheep and hogs stock cars are furnished, and also watering troughs and racks in which to keep hay and grain. For the shipment of oil special oil tanks are furnished. For the shipment of all other commodities special equipment is furnished. Take, for instance, sugar; not only the car is furnished, but lumber is furnished to lay on each row of barrels as they are loaded or rolled into the car. The same is true of many other commodities I might name, but I will not trespass on your time. Now, the lumbermen simply contend for two things: They contend that

either the railroad companies should furnish these car stakes, which cost the shipper from \$3 to \$5 for each and every gondola car and flat car he loads, or that the railroad companies pay the lumbermen if they furnish them themselves. That is the gist of our contention.

Mr. TOWNSEND. Do the lumbermen have the materials in their yards for making these stakes in every instance?

Mr. KENDALL. No, sir. That point was not brought out plainly this morning. The master car builders have adopted a sized stake that must be specially cut for that purpose, a stake that is 4 inches thick and 5 inches wide. There is no lumber, in the general sales of lumber, which is cut of that size. The trade does not demand any lumber cut 4 by 5 inches, so that the lumbermen must go into the forest and cut trees which they are compelled to cut into car stakes of this unusual size and stake the cars, and it requires 12 of these stakes for each and every gondola car that is staked, and it requires 24 cross-pieces across the tops of the stakes, and those must be 1 inch by 5 inches wide and about 10 feet long, so that it requires about 300 feet of lumber to stake each and every gondola car. Now, this may seem a small amount for an individual car, but for a manufacturer who ships from 10 to 20 cars a day it is quite an item, and it is quite an expense that he has to face.

Mr. STAFFORD. How do you arrive at your estimate of the value of \$3 to \$5 for each car?

Mr. KENDALL. We arrive at that from the fact that if these logs were cut into other lumber which the trade demands and calls for they would bring that amount of money.

Mr. STAFFORD. Is that the character of timber that is usually utilizable for stakes, manufactured into lumber?

Mr. KENDALL. Yes.

Mr. STAFFORD. I thought it was utilizable mostly only for pulp or these other by-uses.

Mr. KENDALL. No, sir.

Mr. KENNEDY. You see it is important for us, if we attempt to do anything along this line, to know whether or not any commission, acting in connection with transportation, that would attempt to fix a rate to be allowed to the lumber shipper for staking a car could fix a fair rate. Could any commission fix a fair rate that would be fair all over the country for staking a car of lumber?

Mr. KENDALL. In certain sections the lumber is more valuable than in other sections.

Mr. KENNEDY. It would cost more in some places than in others?

Mr. KENDALL. It would cost more in some places than in others.

Mr. KENNEDY. And I suppose it would make a different cost necessary to be fixed where you had a flat car and a gondola car; the cost would be somewhat different, would it not, according to whether it was a flat car or a gondola car you were staking?

Mr. KENDALL. The flat car requires a larger stake.

Mr. KENNEDY. Than the gondola car?

Mr. KENDALL. Than the gondola car. If not larger stakes, then it requires more of them. The railroad companies have adopted certain rules for staking cars. You can use smaller stakes if you use more of them.

Mr. KENNEDY. Would it be possible, then, if the Interstate Commerce Commission were clothed with the duty of fixing what a rail-

road company should give you off your freight by reason of your doing this thing that they ought to do, for that commission to fix any rate that would be fair?

Mr. KENDALL. Yes, sir; they could fix a fair rate.

Mr. KENNEDY. It would have to be a different rate for different zones, would it not, for different territories?

Mr. KENDALL. Timber does not have a fixed price in all sections of the country, but an average rate could be fixed that would be equitable and fair all over the United States.

Mr. KENNEDY. It would do no great injustice to anybody?

Mr. KENDALL. No injustice; no, sir.

Mr. STAFFORD. Where mills are in the woods, or in the proximity of the woods, is it a practice of the shippers to use stakes of rough-hewn lumber, or do they use merely the short saplings that are taken from the woods?

Mr. KENDALL. Only in rare instances do they use saplings. About two years ago the Master Car Builders' Association of the United States drew up very severe regulations so far as car staking is concerned. They required that you stake them with straight-grained, full-edge, sawed lumber, sawed in sizes 4 by 5 inches, and that you put 6 of these stakes on each side of a gondola car, making 12 on the two sides. It used to be that you could go into your yard and pick up a stake 2 by 4 or 3 by 4 and use it, and you could stake your cars with those stakes; but they now will not move your cars unless they are staked with stakes of the prescribed size and quality as laid down by the Master Car Builders' Association.

Mr. STAFFORD. You mean the minimum size that they have prescribed?

Mr. KENDALL. They only have one size. That is, they have a smaller size, if you use more stakes. It amounts to the same thing. If you use a smaller stake, you have to use enough more stakes to equal the same quantity of lumber.

Mr. STAFFORD. Are you acquainted with the practice in the shipment of logs?

Mr. KENDALL. Yes, sir; that is a part of my business.

Mr. STAFFORD. Are the regulations the same for the shipment of logs as for the shipment of lumber?

Mr. KENDALL. They are the same, except that you can substitute the sapling; you can substitute the round, and you can substitute the sapling when you ship lumber, but your lumber mill is not usually where the saplings are convenient; but the saplings are convenient where you load logs.

Mr. STAFFORD. And where saplings are convenient where logs are loaded, or where the mill is in proximity to the woods, the practice is to use saplings for stakes?

Mr. KENDALL. It has been, but under the new rules of the Master Car Builders' Association it is hardly possible. Those rules are so strict that you can hardly get a sapling which will meet their requirements. It must be absolutely straight and of a large size, so that you would not save anything by using the sapling. There is only one way to get these car stakes—to go into the forest and cut your logs to the length required and then saw them into car stakes. We can not stake our cars with any odds and ends we have around our

Lumber yards. We must go into the forest and cut logs and manufacture them into car stakes, for which we receive no recompense.

Mr. STAFFORD. Are you or any of the gentlemen present acquainted with the method of the carriage of lumber in logs in vogue in other countries?

Mr. KENDALL. I am not.

Mr. KENNEDY. Can you furnish the committee a copy of these rules which you speak of made by the Master Car Builders' Association?

Mr. KENDALL. Mr. Babcock has a copy of them.

Mr. BABCOCK. I have here a copy of the rules of the Master Car Builders' Association.

Mr. ESCH. What systems of railroad do you generally ship over?

Mr. KENDALL. We ship over the Baltimore and Ohio, the Pennsylvania, the Pittsburg and Lake Erie, and Chesapeake and Ohio.

Mr. ESCH. Have you any experience as to the western roads, so called; that is, west of Chicago?

Mr. KENDALL. We have an operation in Oregon, and I am somewhat familiar up there.

Mr. ESCH. Do these master car builder's rules apply to that section of the country, and are those roads in that country carrying out those rules of the Master Car Builders' Association?

Mr. KENDALL. I think the rules under which we work cover the territory east of the Mississippi River. Am I correct on that?

Mr. BABCOCK. I am not so sure about that. Different systems issue these rules under their own supervision, and different systems make different allowances.

Mr. ESCH. This committee has had experience with the recommendations of the master car builders on railway appliances, and we find that while the master car builders may get together and make recommendations and fix standards, when they get to their homes they do not follow out the standards they have fixed. I wanted to know whether that was the case also with reference to these requirements as to staking lumber cars.

Mr. KENDALL. Take the Baltimore and Ohio Railroad, on which we are principally located. The superintendents of the different divisions have issued an iron-clad rule that any conductor who will move a car of lumber that is not entirely staked according to the printed rules laid down by the Master Car Builders' Association will be dismissed from the service; and we have had cars after cars that were safely staked and would have carried safely from here to San Francisco, refused at out siding because there was some technicality by which they were not staked entirely in accordance with the rules laid down by the Master Car Builders' Association.

Mr. STAFFORD. Will you specify such a technicality as you speak of.

Mr. KENDALL. Take the gondola car. For instance, some cars have no pockets on the outside to receive the stakes, but they are dropped on the inside. The side of the car sometimes is three feet wide. Every stake must be dropped down to the floor of that car. If there was one stake out of the twelve on a car that was not dropped to the bottom of that car, although the eleven others were, they would not take that car out. Now I am positive on that.

Again, when the lumber is loaded on the car, if there are not two boards or strips, as we call them, across each set of stakes, they will

not move that car. If there was but one set of stakes that had but one board across, one strip across, they would not move the car. The rule is that in lieu of strips you can use No. 8 wire, and there must be five complete strands around each set of stakes. If you had four complete strands around one set of stakes and five around all the others on a car, they would not move the car. If there is the least infraction of that rule on the part of the shipper, the instructions are positive that that car must not be moved, and the conductor who would move that car on the Baltimore and Ohio Railroad would receive his discharge.

Mr. TOWNSEND. What is the average length of the car that you receive for shipping lumber, the flat car or the gondola car?

Mr. KENDALL. They are from 34 to 40 feet in length.

Mr. TOWNSEND. Now, if they had iron or steel stakes, could they be so arranged that in all cases four stakes would be sufficient instead of six, on a side?

Mr. KENDALL. I think so. Just in that line I want to make another statement to show the unreasonableness of leaving it implicitly to the rules of the Master Car Builders' Association. You have many times seen a load of lumber that is loaded only 6 inches above the side of the gondola, a small load of lumber which may come up only 6 inches above the side. Still that car must have twelve stakes and must be staked with exactly the same care and precision as though the lumber extended 4 or 6 feet above the top of the side of the gondola. You are not allowed to exercise any judgment on the staking of that car, but it must be staked in accordance with the rules that Mr. Babcock has there, or there will not be one car in ten thousand moved from your siding on the Baltimore and Ohio Railroad now. I give that as my authority, because there may be some railroad men here, and I am ready to back up that statement.

Now there is another thing. On the Baltimore and Ohio Railroad when you bind your load as we call it, nail the strips across, if those strips were to drop down touching the top of that load, they would not move that car. Those strips must be at least 4 inches above the top of the load. These things show the technicalities. It is really an extravagance and a burden imposed upon the shipper which is almost unbearable, and is expensive.

Mr. TOWNSEND. Who among your number knows of the case that was taken up to the Interstate Commerce Commission, which has been mentioned here this morning? Do you remember what that was?

Mr. KENDALL. Mr. Babcock is familiar with that.

Mr. TOWNSEND. What was that case you took to the Interstate Commerce Commission on that subject?

Mr. BABCOCK. It was practically as outlined here. We asked that the railroads should furnish the cars permanently equipped, or pay for the equipment.

Mr. TOWNSEND. Can you tell me the name of the case?

Mr. BABCOCK. It was the National Wholesale Lumber Dealers' Association against the railroads, the Baltimore & Ohio Railroad and others. I think Mr. Perry here has a book that will give you all the information with reference to that.

(The book referred to was here handed to Mr. Townsend.)

Mr. KENDALL. One other point along the line as to the railroads furnishing fully and completely equipped cars. If you are familiar with the shipment of coke, you know coke racks are built, some of them, with what we call coke slats to hold the coke in on the sides. Now, the railroads not only build a special coke rack for the coke people, but they furnish those coke slats, which are only used once—the loose coke slats. They furnish them to put in these cars to hold the coke.

Mr. KENNEDY. That is, in the door of a box car?

Mr. KENDALL. No, sir; it is in the coke rack. They furnish them in the door of a box car, too, but I am speaking of specially built coke racks that require some slats on the side where you load the coke in. They do not make the coke operator furnish those coke slats, but they furnish them.

Mr. WASHBURN. Have you any idea what that equipment costs?

Mr. KENDALL. The coke slats?

Mr. WASHBURN. Yes.

Mr. KENDALL. There are about 15 slats, and they cost them about 25 cents for each car.

Mr. KENNEDY. A good deal of coke is transported in box cars, and I have seen on those cars that they have boards stuck across the doors to hold the coke in.

Mr. KENDALL. The railroad companies pay for these coke slats and sometimes there are boards that wide [indicating] and other times only 3 inches wide.

Now, take coke, or coal, or sugar, or oil, or live stock, or fruits, there is not a commodity—I mean a commodity of any standing, of any quantity—but what the railroads furnish those equipments. Lumber is the only exception that I know of, of an industry of any size, where the railroad companies ask the shippers to bear all this expense; and, as was stated this morning, the stakes for staking a gondola car weigh at least 1,000 pounds, and while the railroads give you an allowance of 500 pounds, you still will have to pay freight on 500 pounds. You must not only pay for the stakes, but you must pay freight for half the weight of the stakes.

Mr. TOWNSEND. Does the shipper have the stakes when he gets through, if they are worth anything at all?

Mr. KENDALL. No, sir; the shipper never sees the stakes. He never gets them.

Mr. TOWNSEND. What becomes of them?

Mr. KENDALL. The party who receives the lumber gets the stakes; but they are cut of such a size that they are practically of no value except for fuel. They are short. They do not have a good length, and neither have they a good size for the usual uses of lumber.

Mr. TOWNSEND. Does the shipper take the value of those stakes into consideration when he sells to the buyer? Does he get anything for the stakes himself?

Mr. KENDALL. No, sir; because he may load that shipment in a box car. Prices for lumber are made without regard to the cost of loading the lumber or the cost of the stakes, because frequently you load in box cars.

The point was made this morning that the shipper ought to state whether he wanted a box car or a gondola car, and it was answered by the representatives on our side that on account of the scarcity of

cars the lumberman is glad to get any kind of a car—a flat car or a stock car or a gondola car. The lumbermen always prefer to load box cars, and they load all of them that they can get. They can load them cheaper and they need not furnish the stakes, but they can not get a sufficient quantity of box cars and they must load gondola cars on account of the shortage in the box-car equipment.

Mr. TOWNSEND. Then, as I understand you, those stakes are never taken into consideration by the buyer or seller of lumber?

Mr. KENDALL. They cost the seller what the stakes are worth, but in figuring your price you do not usually figure that.

Mr. TOWNSEND. Do you, ever?

Mr. KENDALL. Only as a matter of profit and loss and expense. It is one of the expenses of manufacturing lumber, just the same as you figure your oil and everything else in your mill. It costs so much for car stakes every day.

Mr. TOWNSEND. But the buyer has nothing to do with that in your transactions?

Mr. KENDALL. I do not see that the buyer just has, but it is simply a part of your manufacture. It is a part of the expense you are put to in manufacturing the lumber.

Mr. ESCH. You charge the same per thousand feet for lumber whether it is shipped in box cars or with these stakes?

Mr. KENDALL. We charge the same whether it is shipped on box cars or gondola cars. But as I say, gondolas or flat cars must be used for a great many classes of lumber. Box cars do not answer the purpose for all classes of lumber. You take pieces of timber 16 to 20 feet long, and they can be laid in box cars; but there is a certain class of commodities that must be shipped in gondolas on account of the length and on account of the weight.

Mr. ESCH. Looking at this bill from the standpoint of the necessity of safety of the traveling public, I am going to ask your opinion. If the railroad supplied the staking and other equipment to make safe the cargo at its own expense, would it be apt to make it as safe as now under the specifications and requirements of the Master Car Builders' Association when made at your expense?

Mr. KENDALL. Well, I would suppose that the railroad companies would use the same specifications and requirements, if they furnished the stakes, as they require of the shipper.

Mr. ESCH. You think that the fact that the railroad company was doing this at its own expense would induce it to use that same degree of precaution which they now exercise in making you come up to specifications?

Mr. KENDALL. I believe they would, from the fact that the danger of a load falling off and causing a wreck, as Mr. Babcock said in his letter, would make them do so. I do not think they could take the risk of being careless in staking their cars in order to save some money on the staking.

Mr. ESCH. Yes; but you have already said, or other witnesses have said, that, for instance, on a gondola car, where it only requires the staking for 6 inches above the side of the car, if you could use your judgment you would use a good deal less lumber in fixing the car or staking it.

Mr. KENDALL. Yes.

Mr. ESCH. Therefore the railroad company would exercise that discretion and cut out that much expense?

Mr. KENDALL. They might if they had the experience; if they understood. The master car builders, who get up these regulations, will not all be practical lumbermen, men who have loaded hundreds of cars of lumber. They may not be familiar with the method of loading a car safely and they may not know whether a car is safely loaded or not.

Mr. TOWNSEND. Do you know whether or not the Interstate Commerce Commission exercises any authority in prescribing how cars shall be equipped with these stakes?

Mr. KENDALL. I think not.

Mr. TOWNSEND. How they shall be equipped with ladders and other devices for handling and moving the lumber?

Mr. KENDALL. The Interstate Commerce Commission requires that the handholds of cars and the doors and all that part shall be securely fastened, so that when a trainman gets hold he will not lose his life.

Mr. TOWNSEND. Yes; but I was speaking of the loading of gondola cars and flat cars.

Mr. KENDALL. I think they are silent on that, are they not, Mr. Babcock?

Mr. BABCOCK. So far as I know, they are.

Mr. KENDALL. I think they have never made any regulation for that purpose.

Mr. TOWNSEND. Supposing I was a millionaire and could afford to buy two full carloads of lumber, and you had them equipped; you sold the lumber to me and you had the stakes, twelve on each car. In our dealing in any way would I have to pay for those stakes to you?

Mr. KENDALL. Yes, sir; on this principle, that every business must support itself, and in order to support itself it must bear all the expenses that go to the carrying on of that business. The cars are part of the fixed expense of the lumber business just the same as the manufacturing of the lumber is a part of the fixed expense. In that sense of the word you would pay for them to me. Take an ordinary West Virginia sawmill, and their expense for staking cars, if they load thirty cars a day, is about \$35 a day. You surely must pay your share of that \$35 a day if you buy two carloads of lumber.

Mr. TOWNSEND. Do you think I would get it for any less if that custom was not in vogue?

Mr. KENDALL. I believe you would. Competition would bring it down that much less. Are there any other questions? I am through unless you wish to ask me more questions.

Mr. BABCOCK. Assuming that Mr. Townsend had the price to buy the two cars of lumber, you would make no charge for these stakes whether you shipped it on a flat car or on a gondola car? It would not appear in that particular shipment?

Mr. KENDALL. It would not appear in that particular shipment, but it would appear in the business of the lumber company in the same form as would the oils that oil your mill, as would the feed that feeds your horses. It is one of the expenses that must be taken care of by the receipts from the sale of the lumber.

Mr. STEVENS. If you can not pay your expenses, you go out of business?

Mr. KENDALL. You go out of business, sooner or later.

Mr. STEVENS. But you have to meet the prices of your competitors, do you not?

Mr. KENDALL. You have to meet the prices of your competitors; and all of our competitors are in the same boat. They all have to furnish car stakes.

Mr. STEVENS. But some can furnish the car stakes on better conditions than others?

Mr. KENDALL. Yes; that is correct.

Mr. BABCOCK. I would like to have Mr. Wheeler, who is an old and experienced lumberman, tell you what he knows about car stakes.

STATEMENT OF HON. NELSON P. WHEELER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA.

Mr. WHEELER. I did not expect to do this, but I think the last gentleman has stated the matter pretty fully. You take all other commodities, and the railroads furnish cars in addition to carrying the commodity. In coke cars they have the sides arranged so as to carry the coke, and in coal cars it is the same way, even to dumping it; and it is the same with regard to cattle. So with oil, they send us in the tank cars to load the oil. When you come to the question of lumber the box cars are all right for what you ship in them, but when you get to the flat car or the gondola car it is impossible to load the gondola car without its being staked, and the requirements are very severe, and perhaps should be, in order to make it safe. A lumberman can not load a flat car at all, or a gondola car, without having it properly staked, and staked as these gentlemen say. It looks to me reasonable that the cars that they furnish the lumbermen to carry lumber should be so arranged that they can carry the product as all other commodities are carried. That is about the whole of it, as I look at it.

As to the question of who pays for the stakes, why, the lumberman pays for the stakes; he has to furnish them. He goes farther. For lumber delivered to Pittsburg, Washington, or Baltimore he agrees to deliver it at a certain price. If he can get a box car, he can put his lumber into that box car; if he can not get a box car, he has to so arranged the car as that it will carry the product. That is about all there is to it, as I see it.

Mr. KNOWLAND. According to that idea, then, it would be cheaper to ship altogether by box cars, if you could get enough box cars?

Mr. WHEELER. Yes; it is cheaper to ship in box cars, if you can. You do not have that expense of furnishing the stakes, or the expense of fastening them thoroughly across, either by the aid of strips of board or by wires.

Mr. WASHBURN. So far as your experience goes, do the lumbermen in any particular part of the United States have any advantages over those in other parts in the facility with which they can get box cars instead of gondola cars?

Mr. WHEELER. I do not know that, sir. Of course, there are times when they need the box cars for carrying grain, and box cars are

difficult to get; and there are times when you may have some heavy timbers that you want to ship that you can not get in box cars.

Mr. WASHBURN. My point is this. If the price of lumber is made on the cost of carriage in box cars, and you say the cost of staking is not shouldered by the consumer—

Mr. WHEELER. Yes.

Mr. WASHBURN. (Continuing.) I should think that the dealers would have to pay that.

Mr. WHEELER. They do; only, in the general wind up you want a business to pay as it goes along.

Mr. ESCH. This amendment requires equipment for the transportation of pipe, tubes, and so on. Do you happen to know the requirements of the Master Car Builders' Association as to those articles?

Mr. WHEELER. I do not; no, sir.

Mr. ESCH. And whether they are as onerous as the requirements on the shipment of lumber?

Mr. WHEELER. I presume they would be. I do not know, sir, from my own personal knowledge.

Mr. ESCH. You could ship any amount of pipe and tubing in a gondola car before it ever got to the maximum?

Mr. WHEELER. That is a fact. The sides of the ordinary gondola car are high enough to allow you to ship a maximum carload without any staking. Yes; I can see that.

Mr. CALDER. It is much easier to unload lumber from a flat car than from a box car, is it not?

Mr. WHEELER. I do not know about the unloading. It does not make any difference to us about the unloading; we are not on that end of it. We are shipping. I do not know that there is anything else I care to say. The railroads furnish equipment for every other commodity so that you can ship it safely, but in these gondola cars and flat cars you can not carry lumber until you go to the extent of putting in this equipment, which you lose entirely.

Mr. STEVENS. Is there anything further, Mr. Wheeler?

Mr. WHEELER. Nothing at all.

STATEMENT OF MR. FREDERICK S. UNDERHILL, OF PHILADELPHIA, PA.

Mr. UNDERHILL. I am here representing the National Hard-Wood Lumber Association of the United States, and also I am individually a manufacturer and shipper of lumber. I shall not have much to say except that I indorse what has already been presented to the Interstate Commerce Commission, as shown by the report of the Interstate Commerce Commission, and what has been presented here by the lumbermen whom you have heard; and I have the indorsement of the National Hard-Wood Lumber Association of the United States in this, as being appointed as their delegate to represent them. The National Hard-Wood Lumber Association covers a very large part of the United States, and is one of the largest, if not the largest, of the associations of lumbermen in the United States.

Outside of indorsing what has been said I only have this that I might say. The point was brought up this morning—not brought

out, but intimated—as to whether it would not be an unbearable burden upon the railroad men to equip cars at an expense of \$30 a car for so many cars as they might be required to equip. If the payment of \$30 for each car for permanent car stakes is a burden on them, is it a burden that can for a moment be compared with what the lumbermen pay every year to equip those cars? In other words, the lumbermen are paying every year to equip those same cars at least \$30, whereas a permanent equipment would fit them for many years.

As to the ultimate solution of the matter and the providing of an adequate car stake, it seems to me that the railroad companies have corps of efficient engineers who are quite familiar with the equipment of cars, and if the Interstate Commerce Commission should pass a rule, be authorized or instructed by Congress to pass a rule, by which the railroad companies would be required to compensate the shippers of lumber for car stakes furnished in the absence of permanent car stakes, they themselves would solve the problem in the most economical way possible.

I do not think I have anything more to say except that that point occurs to me as being well worthy of consideration.

Mr. WASHBURN. If the cars should be equipped by the railroads, would you view with complacency an advance in the freight rate?

Mr. UNDERHILL. We would not, by any means, because we think that the railroad companies are being adequately paid for carrying lumber. I do not think that one railroad company to-day would assume that they are not carrying lumber at a profit. It is an easy burden for them to bear, and a profitable one; and, of course, if because Congress imposed this upon them, or because the Interstate Commerce Commission imposed this upon them, they retaliated by raising the rate of freight, then I should think action should be taken to prevent them from doing so, because it would be an injustice; it would be simply a retaliation.

Mr. WASHBURN. This would amount to a reduction in the freight rate for carrying lumber?

Mr. UNDERHILL. It would; yes, in a sense it would. It appears that way; I will put it that way. But from our point of view it is simply giving justice to those who produce a large part of the traffic of the railroad companies of the United States.

Mr. WASHBURN. Is not your belief practically this: That you think the railroad companies ought to carry the lumber for less than they carry it for now by the cost of the staking of the cars—that is, by that amount? That is what it amounts to, does it not?

Mr. UNDERHILL. That is one way of getting at it. No; we are not asking them for a rebate of freight; but perhaps the simplest way for them to adjust the matter is to take it off the freight bill. That would perhaps save them a lot of bookkeeping and a lot of claims. If they did not do it in that way, it would necessitate the installation of the necessary claims divisions in their own departments; and every manufacturing lumberman would have to take the same method.

Mr. KNOWLAND. Do you think this would result in any cheapening of the price to the consumer?

Mr. UNDERHILL. That would depend altogether on conditions. There are some things that possibly would not be reduced and some

things that would be. There are some things to-day in the lumber business that can not be reduced; that is, every penny that is taken off the carload is a penny lost to the manufacturer. I know of companies to-day who are manufacturing and shipping lumber at an actual loss; they are not getting the price of the stumpage to-day for the lumber. There are many of them.

Mr. WASHBURN. Do you know anything about the cost of staking in the cypress region of the South? Somebody said to-day that that was much more expensive than staking elsewhere.

Mr. UNDERHILL. No; but there is a gentleman here to-day who can testify on that. Mr. Price, I think, can give you that information when he is called to testify.

Mr. STEVENS. You would not contend as a general proposition that the price to the consumer would be affected whether the railroad companies pay for the staking or you pay for the staking?

Mr. UNDERHILL. Not as a general proposition. However my associates may stand on that point, my point is this, that in the present case it is an injustice to the lumberman.

Mr. STEVENS. That is just it.

Mr. UNDERHILL. And that this is a matter of giving justice to men.

Mr. STEVENS. And that under competitive conditions, this constitutes an advantage to some who already have an advantage, and a greater disadvantage to those who are at a disadvantage.

Mr. UNDERHILL. Yes; there are some men, as was brought out by somebody this morning—some shippers of lumber—who have facilities for securing a great many more house cars to ship their lumber in than others.

Mr. WASHBURN. That is the point I made a while ago; because the cost of shipping is made on the house cars, then the extra cost of shipping in gondola cars must fall on the dealer, and can not be shifted to the consumer?

Mr. UNDERHILL. Yes; I think that is possibly an original conclusion.

Mr. ESCH. Do you know of a case where a connecting carrier refused to receive a car unless it was packed and staked according to these rules?

Mr. UNDERHILL. We have had cases like that, and where we have found they were stopped at junction points for rearrangement.

Mr. ESCH. Suppose that rearrangement is necessary, how is it done? At whose expense is it done?

Mr. UNDERHILL. We have a traffic department in my firm and a young man in charge of that, but without having looked into that my recollection is, in fact I am sure, that the expenses are placed upon the freight bill.

Mr. KENDALL. On the manufacturer—on the shipper.

Mr. UNDERHILL. When you come to that bill you find there is something you can not account for sometimes, and when you trace it out you find that is it. We have not had many cases of that.

Mr. ESCH. Have you shipped generally over the country?

Mr. UNDERHILL. Yes; South and North and East.

Mr. ESCH. So that your shipments have gone to all sections of the country and have extended over all the main systems?

Mr. UNDERHILL. Almost all of them.

Mr. ESCH. That would seem to indicate, would it not, that these various systems are not coming up to the requirements of the Master Car Builders' Association?

Mr. UNDERHILL. I suppose there are some cases of that kind. I might say this, that a good many of our shipments that go over many routes actually do go in house cars. We ship a good many from Nashville, where we have the ability to secure a good many house cars. In fact, we do not often load on gondolas from Nashville. These shipments will go into the Northwest, into New York City and New England, and into Canada, and so forth.

Mr. ESCH. Most hard wood is shipped in closed cars, anyway?

Mr. UNDERHILL. Yes; but there are some low grades of it that are shipped in open cars, and especially in times of scarcity, when they are moving cotton or grain, we are glad to get them.

STATEMENT OF MR. L. H. PRICE, REPRESENTING THE SHIPPERS' ASSOCIATION OF NEW ORLEANS, LA.

Mr. PRICE. The wind was taken out of my sails by your honorable chairman this morning. He rather intimated that he did not want a burst of eloquence here, but simply a statement of facts. I was not apprised that I was to be a delegate before this committee until Friday, and, living down there in the swamps among the alligators, I do not have access to libraries, and for that reason I evolved in my mind a subject to be presented to this honorable committee, and the bursts of oratory that passed through my mind were something surprising; and then to have it all knocked out is very embarrassing to me.

Mr. WASHBURN. The chairman is not here now, sir.

Mr. PRICE. The chairman is not here, so that we will proceed to business. We have not come here to ask the railroad companies to give us anything. That is my position. We own cypress timber, and what we want for it is pay for it when we ship it and when we sell it. That is all we ask for. We do not want to be engaged in the construction of cars. If we are, let the car company issue us some stock. If we have got to furnish a part of a car to load our product, let the railroad company or some manufacturing company issue some stock to us, so that we can derive some benefit from it. If we have got to give the railroad companies four or five dollars' worth of lumber to ship our product, we think an injustice is being imposed upon us.

Mr. STEVENS. Do you not get your rates cheaper on that account?

Mr. PRICE. No, sir; we do not; not 1 cent. You will be told by the representatives of the railroads, undoubtedly, that this is an old custom that has been in vogue for fifty years or more; that the lumbermen have not objected to this until recently. We will admit that; but, as the saying is, "there are reasons." In the first place, a few years ago we could go to the railroad companies, as I have done frequently, and say, "Here, Mr. Freight Man, I have got a million feet of lumber that I want to move." The rate to my point may be 15 or 20 cents. Now, mind you, I have been in the retail business in the North and I know all about these things. Now I am a manufacturer; but as a retailer we would go to the general freight agent and say, "We have got that lumber to move. I want such and such

a rate." We would get it. I have known thousands of cars of lumber to be shipped from Minneapolis to Kansas City for 8 cents when the rate was 15 cents.

Mr. TOWNSEND. Has that been done since the passage of this bill?

Mr. PRICE. No, sir; that was up to the passage of this bill. The lumbermen who got that rate did not feel disposed to go to the railroad company and say, "Here, we want you to pay for our car stakes." They could afford to pay for them; because, further, if they wanted a pass for themselves and their wives and their hired girl to go to Chicago they could get one.

Mr. WASHBURN. Then your point is that the rate in effect has been raised?

Mr. PRICE. That was up to the time of the Interstate Commerce Commission; up to the time that that law was passed.

Mr. WASHBURN. Yes, I understand; but the effect of that law has been, in fact, to increase your rates?

Mr. PRICE. To increase our rates.

Mr. WASHBURN. And you want the railroads in consequence to do more than they did before?

Mr. PRICE. That is what we want the railroad companies to do, to furnish us cars prepared to ship these products.

Mr. WASHBURN. I would like to ask you two questions: What proportion of your product do you ship in house cars, and what proportion in gondola or flat cars?

Mr. PRICE. We will not ship lumber in a gondola or a flat car going to the North, unless it is timbers or something that can not go into a box car.

Mr. WASHBURN. What proportion of the cars you load do you have to provide with these stakes?

Mr. PRICE. The proportion of cars we ship from our mill, outside of what we ship by the Morgan Line to New York City, outside of the local trade, or ties, or something of that kind.

Mr. WASHBURN. A small proportion of your total shipments?

Mr. PRICE. I am talking about our own mill.

Mr. WASHBURN. Yes.

Mr. PRICE. There are some of the cypress manufacturers who perhaps ship more in gondola cars or flat cars than we do.

Mr. WASHBURN. One-third only, say. What does it cost you to stake a gondola car?

Mr. PRICE. It costs us in the neighborhood of four to six dollars a car.

Mr. STEVENS. Why does it cost you more than it does others?

Mr. PRICE. Because cypress timber is more valuable. The cut of cypress is the smallest of any timber that is produced.

Mr. STEVENS. Do you have to comply with any requirements?

Mr. PRICE. Yes; we have to stake according to the Master Car Builders' Association requirements.

Mr. STEVENS. That is, you have to use stakes of the same size?

Mr. PRICE. Practically of the same size that has been talked of here to-day.

Mr. KENNEDY. One of these stakes would be almost big enough to make a good railroad tie, would it not?

Mr. PRICE. In one way. It is a pretty fair-sized stake. I do not understand the unreasonableness of that regulation which requires

a 4 by 5 stake to go into a pocket 3 by 4 inches. The big part of that stake then comes right up to the top of that pocket. When you come to hew down the stake, it is not always straight grained, and there is only one way to do it; we hire a negro at \$1.25 a day to do it, and when that stake goes into the pocket it is not always in the best condition, but it is there all the same. There is a 3 by 4 hole, with a 4 by 5 stake, and if that stake breaks anywhere, the probability is that it is going to break right down there where it goes in that socket. Then, further, a man in the lumber business does not feel like going single handed at a railroad company. He has got to be built of pretty good material and have pretty good financial backing to do that. It is only in recent years we have had our lumber organizations. Now that we have our lumber organizations and get together and meet on these points, we are not single handed, and we feel just as strong as some of the railroads are, and we do not fear going up against them on any proposition.

Mr. STEVENS. Have you found a disposition on the part of the railroad managers to retaliate because you have made demands on them of this nature?

Mr. PRICE. We have.

Mr. STEVENS. How long ago; recently?

Mr. PRICE. Well, I might go into a little historical account of a proposition that we have down there in Louisiana that will probably come before this Congress. We hope to get relief there. I refer to the building of a ship channel through Atchafalaya Bay. We have done that work for our own relief, to help us out on the car proposition, and we have had Representatives in Congress down there looking over our proposition. Of course this is outside of the question at issue, in a sense; but the lumber men down there cut that channel through at a cost to them of about \$175,000. We are small, but we put up \$10,000 to help build it. Now we hope for Congress to take that off our hands and make it a channel 20 feet deep and 200 feet wide, so that we will not ask the railroad companies to stake our cars.

Mr. STEVENS. You find that railroad companies have discriminated against you because you tried to protect yourselves against them?

Mr. PRICE. Well, I will not say positively, no, that they have done that. I would not say that they have.

Mr. STEVENS. Do you know of any other instances where there has been that charge of discrimination because you have tried to protect yourselves?

Mr. PRICE. I can not recall any case of that kind to my mind at present. The cypress lumber manufacturer, as I say, is the smallest of the lumber manufacturers. We only cut about 8 per cent, or such a matter, of the total amount of lumber produced, and all the better grades of lumber practically go to the North, and we can not ship it in gondola cars. If the railroad companies want to furnish us two cars in the place of one, we will accept that, and it is up to them. We have loaded as high as 40,000 feet of lumber on one gondola car. The most we can possibly get into a box car, of inch lumber in the rough, is 26,000 to 28,000 feet.

Mr. STEVENS. What is the minimum?

Mr. PRICE. The minimum goes by weight.

Mr. STEVENS. How much is it?

Mr. PRICE. About 34,000 pounds.

Mr. STEVENS. That would be just about the minimum, would it not? You could load just about the minimum?

Mr. PRICE. Well, yes; we can load the minimum all right. Twelve thousand feet of rough lumber would make the minimum weight, taking it on the basis of 3 pounds to the foot of rough lumber; but because we have stood this for twenty-five or fifty years, it is no reason why we should stand it for twenty-five or fifty years longer. The fact of the matter is that in about fifty years from now it will not make any difference whether there are any car stakes or not; the product of lumber, the way it is being cut at the present time, will be too small then to be of any consequence.

Mr. ESCH. When did the Master Car Builders' Association first put into force these new requirements with reference to staking?

Mr. PRICE. The first that we had was last year.

Mr. ESCH. Last year?

Mr. PRICE. Last year, on the Southern Pacific road.

Mr. ESCH. Then the requirements have been more severe since, the expense has been increased, has it, of staking lumber?

Mr. PRICE. The expense has been increased to the extent that we are obliged to cut a four by five instead of a three by four.

Mr. ESCH. How much additional expense does that make?

Mr. PRICE. A three by four has got 10 feet in it and four by five has got proportionally more in it.

Mr. ESCH. Did you have complaints against these requirements before the late rules of the Master Car Builders' Association that you speak of?

Mr. PRICE. No, sir; not with us.

Mr. ESCH. Then the complaint has arisen practically within the past year—since the requirements have been increased?

Mr. PRICE. What complaint?

Mr. ESCH. About this expense of staking?

Mr. PRICE. No, sir; this complaint has come up before the Interstate Commerce Commission. I think it was first brought before the Interstate Commerce Commission in 1905 as a proposition to be corrected.

Mr. ESCH. Even then it was onerous—it was burdensome on the manufacturers and shippers?

Mr. PRICE. Surely; surely.

Mr. ESCH. You say now that the burden has been increased by these late requirements?

Mr. PRICE. Yes, sir.

Mr. WASHBURN. Why increase their requirements? Were there any accidents?

Mr. PRICE. Yes; as I understand from Mr. Babcock, there have been accidents. That is the reason why they were increased, as a protection to the railroad companies against accident.

Mr. Townsend asked a question in connection with the two car-loads of lumber that he would be able to buy if he was a millionaire. He asked the question if the cost of staking was borne by the shipper, or if he would have to pay in the purchase of that lumber for those car stakes. I claim that he would not pay for them; that that is a burden borne by the manufacturer absolutely; that it does not enter into the cost of the lumber to the consumers of this country.

Mr. STEVENS. It will be borne either by the manufacturers—

Mr. PRICE. It is borne by the manufacturers wholly.

Mr. STEVENS (continuing). Or by the railroads.

Mr. PRICE. Or by the railroads, on the other hand. We can not figure our car stakes in our price, either incidentally or directly. The cost of the car stakes is borne by the shipper absolutely.

Mr. STEVENS. Has there been any additional complaint since the passage of the Elkins bill? You get more for your lumber now than in 1903?

Mr. PRICE. The prices have fluctuated.

Mr. STEVENS. You get more on the average?

Mr. PRICE. In 1908 and in 1909 we sold lumber for less than we sold it for in 1906 and 1907. The prices of cypress have not fluctuated as much as the prices of yellow pine and other kinds of wood, as I have said before. Cypress is limited in production, and it comes more properly in competition with white pine, as finished, than any other wood that is manufactured; and, as you well know, the production of white pine is diminishing, and it becomes less and less each year. So that cypress has maintained its price better than the other woods for that reason.

Mr. STEVENS. If I understand your proposition, since the passage of the Elkins bill and since the abolition of rebates under that bill practically you have been compelled to pay more for your transportation?

Mr. PRICE. And we have to pay for it, absolutely. I have not seen a railroad pass for a long time.

Mr. STEVENS. No; and we do not want you to.

Mr. PRICE. That is, I have seen them, but not in my hands. I have seen them in the hands of men that I did not think were any more entitled to them than I was.

Mr. STEVENS. I know if I had my way I would abolish every one of them and make every man that rides on a railroad pay for it the same as the rest of us do. Now, you say the price of your transportation has increased since the passage of the Elkins bill in 1903?

Mr. PRICE. Yes, sir.

Mr. STEVENS. The requirements as to this staking increased correspondingly to the increase in the price of lumber—that is, it costs you more for your stakes now than then?

Mr. PRICE. It costs us more simply because timber is more valuable.

Mr. STEVENS. That is it.

Mr. PRICE. A few years ago we did not consider the price of stumpage of any value. There are millions of feet of cypress lumber purchased in the State of Louisiana that did not cost the manufacturer anything, practically; but when you come to paying \$7, as you do to-day, it is a different matter.

Mr. ESCH. Cypress has increased \$5 a thousand within the last month, has it not?

Mr. PRICE. I do not think it has increased \$5 within a month, but within the last three or four years it has.

Mr. STEVENS. Then, the substance of your complaint is that you have been compelled to pay more for your transportation and that you get fewer facilities and accommodations from the railroads, and the cost of the staking has increased; is that it?

Mr. PRICE. That is the substance of the proposition when you come to figure from the date of the passage of this interstate-com-

merce act. Of course, all manufacturers of lumber did not get the same rates. There were favored ones before this law was passed. They did not all get the same rates; and there was the injustice of it.

Mr. STEVENS. Do you know of any complaints against the injustice of this practice of staking before the passage of the Hepburn bill of 1906 and the Elkins bill of 1903?

Mr. PRICE. No, sir; I do not.

Mr. STEVENS. So that those complaints have risen since the passage of these bills?

Mr. PRICE. Yes, sir; for the reasons that I have stated before, that we have associations at the present time, and the individuals did not feel before like going up against a proposition of this kind single handed against a railroad company, but as associations we feel that we can stand it—we can stand a little racket.

Mr. TOWNSEND. Did your associations have anything to do with the increased price of lumber to the consumer?

Mr. PRICE. Did we have anything to do with it?

Mr. TOWNSEND. Yes.

Mr. PRICE. No, sir. Now, you are speaking about the increased price of lumber. In its broad sense, lumber is cheaper to-day—certain kinds of lumber—than it has been for years. There are manufacturers of yellow-pine lumber to-day, and large ones, who I do not believe are making the two ends meet. What your retailer is charging is a different proposition; but the manufacturer of lumber is in that position. There are mills to-day of good standing that are manufacturing lumber at no profit whatever. Mr. Kirby, of Texas, has in the neighborhood of fifteen mills. Part of his mills are shut down and the balance of his mills are running five days in the week, and he is simply doing that to employ his labor, to help them along. He runs five days a week; it is not profitable for him to run six days.

Mr. STEVENS. Is there anything further?

Mr. TOWNSEND. Do you know what the wholesale price of your lumber was in 1903?

Mr. PRICE. In 1903?

Mr. TOWNSEND. Yes.

Mr. PRICE. What kind of lumber have you reference to?

Mr. TOWNSEND. Any grade of lumber.

Mr. PRICE. Cypress lumber?

Mr. TOWNSEND. Cypress lumber, yes. You are familiar with that.

Mr. PRICE. The price of cypress lumber in 1903 did not vary very much from what it is at the present time.

Mr. TOWNSEND. I understood Mr. Esch to say that the price of cypress had increased within a month \$5 a thousand feet, and I understood you to admit that, while it had not increased that much within a month, yet within four or five years there has been an increase of \$5 a thousand.

Mr. PRICE. That was on cypress stumpage.

Mr. TOWNSEND. Oh, on stumpage?

Mr. PRICE. Yes.

Mr. TOWNSEND. But your lumber remains about the same?

Mr. PRICE. It remains about the same. There are some kinds that have advanced. Tank lumber has advanced, and selected lumber, but common grades of lumber are very low at the present time.

Mr. TOWNSEND. Are you a retailer also?

Mr. PRICE. No, sir; I am not.

Mr. CALDER. How about the price of yellow pine as compared with the price in 1903?

Mr. PRICE. I could not say as to 1903, but in 1905 and 1906 and 1907 yellow pine was much higher than it is to-day.

Mr. CALDER. At that period the building industry throughout the country was booming, was it not?

Mr. PRICE. Yes, sir.

Mr. CALDER. For the period around 1900?

Mr. PRICE. Well, I could not just state what the conditions were in 1908. I think about that time, though, there was a little revival in trade from what it was in 1906 and 1907. Prices were pretty well down at that time; a good many went broke.

Mr. CALDER. If lumber is not any higher from the wholesaler now than it was in 1900, the consumer in New York is paying 50 per cent more.

Mr. PRICE. Well, I have known common grades of lumber to sell as low as \$6 at the mill.

Mr. CALDER. Now; at this time?

Mr. PRICE. Yes.

Mr. CALDER. Is that right, Mr. Kendall?

Mr. KENDALL. Yes, sir.

Mr. PRICE. The freight charges, though, would be quite a little from our section of the country to the North.

Mr. STEVENS. Do you wish to say anything further?

Mr. PRICE. I do not wish to say anything further, unless the committee have questions to ask.

STATEMENT OF MR. LEONARD BRONSON, OF CHICAGO, ILL.

Mr. BRONSON. I live in Chicago. I represent the National Lumber Manufacturers' Association. I might say that this organization is a delegate body made up of other local sectional associations of lumber manufacturers, or those devoted to some particular wood. There are 13 of these organizations covering the country, excepting the New England States and New York. My association is organized to combine for public purposes and for common purposes in regard to legislation, national or state, to bring about uniform state legislation, to touch on general railroad matters, etc., the matters in which all lumbermen are interested, avoiding controversial matters. I wish to confine myself, and have done so in considering this matter, to some of the general questions involved, although I find that pretty nearly everything that I wished to say—intended to say—has been said, perhaps better than I could say it, by those who have preceded me, so I will not read much of what I had prepared, for which no doubt you will be thankful.

We support this bill or a bill of like tenor and for the like purposes. In order to complete the interstate-commerce law by writing into its letter that which is unquestionably implied in its spirit, we contend that one of the principal objects of this legislation has been not only to make rates reasonable and uniform, but also to make them certain, so that anyone could go into the freight market and find the

rate on his commodity and know what it would be; and in that line the railroads are required to furnish transportation which includes all means and facilities and instrumentalities of transportation, and included in these instrumentalities and facilities seem to us unquestionably to be cars so designed as to carry safely any commodity largely in use which presents a large amount of traffic, so that cars can be designed for it or equipped for it, which is not in the class of small, individual units which must be crated or boxed or bound separately. The carload unit in the carload rate presupposes that the car itself is the package. A former speaker spoke of the advance in public sentiment. Time was when we took advantage of the railroads and the railroads took advantage of us. It was the smartest man who could get the best rate, and the man who was not so smart lost out in the competition. Some railroads made money by improper practices; others lost money by competing with them in like improper practices. I think there is no doubt about that situation in a general way; but allow me a word to carry my idea more clearly. Low rates would be put into effect on short notice or on practically no notice in the old days, but advance information of the proposed change would be given to the favored shippers, so that they would be ready to take advantage of the rate when it became effective, and as soon as their shipments were under way the rate would be withdrawn as suddenly and peremptorily.

It is not unknown to the public, and much less to you, that rebates, until a later date than 1887, were a common method of making special rates to favored shippers. Another form of discrimination was the giving of special facilities to favored shippers. All such schemes and methods of preference it has been the object of the Congress, representing the awakened sense of justice to the people, to abolish. For that reason notices of advances in rates are required to be filed with the Interstate Commerce Commission thirty days before the date on which the rate is to go into effect. Rates are required to be made public, so that all may know what their rights are, and all may be prepared to take advantage of them. Rebating has been recognized in the statute as not only wrong in principle, but criminal on the part of the carrier and of the shipper as well. Conditions of transportation are attempted to be made uniform in all particulars, all to the intent that every individual may have equal advantage of equal rights and that rates may really be certain to all. As we look at it, the development of the law of the land has been for the real if not the avowed purpose of making men equal in opportunity. The artificial advantage, the advantage due to greater power, to cunning, to dishonesty, has been taken away. But particular rates are not certain so long as there remain extra and varying costs which are properly part of the transportation charge, but which are not included therein. As has already been called to your attention, railways in general make an allowance of 500 pounds for the weight of the special equipment furnished by the lumber shippers. So far as it goes, this regulation or allowance is in the interest of justice, but it does not take into account the value of the material nor of the labor required to put it into place. The value of this material varies at different mills. The cost of the labor also varies with the location of the plant, with the result that sometimes as much as 50 cents a thousand feet may be added to the cost of the lumber f. o. b. cars at

mill or other loading points. This 50 cents may mean as much as 5 per cent of the f. o. b. value of the shipment. It may even happen that one lumber shipper may be required to furnish this equipment because the railroad provides him only with flat cars for the shipment of lumber which should be shipped in box cars, while his neighbor and competitor may, by the favor of the railroad, receive a box car and not be compelled to incur any such expense.

Mr. WASHBURN. If I am not interrupting you, may I ask you there if that is a grievance? Is there favoritism shown by the railroads in distributing box and gondola cars?

Mr. BRONSON. I understand from the members of my association that that is true, sometimes. There is certainly an opportunity; and since every man stands on his own right, if everything is open—supposed to be—we believe that as we as lumbermen have been thrown back from these vantage points of rates, of special rates and special privileges, passes or what not, and the railroads have also been debarred from combining with shippers, which things were wrong and are wrong in principle, all these things should be available to all shippers. These conditions so far as they go in regard to car stakes render the cost of transportation uncertain, and also sometimes, and often, unequal. Then, if it be the duty of the railroad to furnish the equipment suitable for the commodity to be transported, since the equipment is according to the law a necessary part of the transportation service, the cost of that equipment must not be an extra charge, but should be and must be included in the rate. Here we come to the question brought up by other speakers, and I think it was Mr. Stevens who asked if this would mean an advance of rates. We hold that it should not, because we believe that the rates are ample; but if it were necessary for the sake of confining the carriers to their duties, to their proper province, compelling them to fulfill their duties, to place the lumber men under a proper equality in the eyes of the law, then if the Interstate Commerce Commission declares that this extra cost to the railroads requires an increase in the rate, we would have to stand it. We do not believe that such would be the result. We believe we could show that the present profits on lumber would amply pay for it, and we think that we could successfully resist any such move. But if it did appreciably, in the eyes of the Interstate Commerce Commission, affect the cost of carriage so that the advance in a rate was necessary, we certainly would have to stand it, because we would have no ground for complaint beyond our demonstration, our evidence.

Mr. STEVENS. You would then be willing to put the cost of car stakes on somewhat the same basis as the cost of icing in refrigerator charges; putting it on a different basis, but including it in the bill?

Mr. BRONSON. No, sir.

Mr. STEVENS. I say, you would be willing to have that done?

Mr. BRONSON. No, sir.

Mr. STEVENS. Then I did not understand you.

Mr. BRONSON. Our position is that the stakes are a necessary part of the car which the railroad company is obliged to furnish at the open rate, at the certain rate. It may be that as a matter of book-keeping, as a matter of the practical handling of the matter, they should be allowed to make some payment to the shipper or to make

some allowance to the shipper on account of the stakes that the shipper shall furnish the railroad company.

Mr. STEVENS. Do you not think that would be unsafe? As the chairman brought out this morning, in the long run would not that give an opportunity for undue preference or favoritism to shippers in the allowances?

Mr. BRONSON. No greater than the opportunities for favoritism now, nor as great.

Mr. STEVENS. Ought we not to stop all opportunities for favoritism, if we can?

Mr. BRONSON. If we can; but do you not avoid the danger of evil when you are doing the right and logical thing?

Mr. WASHBURN. Is not your position this: If you send to a railroad and they elect to send you a box car, they send you a car so equipped that you can load your stuff without expense to yourself, excepting the cost of labor in loading the car. Now, if they elect to send you a flat car or a gondola car, you want it also sent so equipped?

Mr. BRONSON. Certainly.

Mr. WASHBURN. So that the only cost to you will be the cost of labor in loading the car?

Mr. BRONSON. Yes. Let everything which it comes within the province of the railroad company to furnish be expressed and covered in the rate. I am not familiar with the refrigeration business, and there may be special reasons why that will not apply to icing and that sort of thing.

We admit that Commissioner Clark's opinion, quoted by Mr. Babcock, might have an appearance of conclusiveness in the case of some commodity of unusual character and which rarely enters into railroad traffic; perhaps a special equipment for shipping a carload of giraffes might be chargeable to the shipper, although in our minds there would be some question as to that point. Certainly, however, the burden of furnishing equipment can not be placed upon a commodity of known character, the needs for the carriage of which are well defined and the quantity of which is great, as is the case with forest products. I need not go into the volume of this business. The tendency of legislation, as I have said, is to make artificial conditions of transportation equal to all. The citizen must bear the penalties of his own mistakes of judgment, or of his misfortunes. The lumber producer may sell his lumber cheaper or make more money if his costs are lower by cheaper transportation. The railroad may sell transportation cheaper or pay larger dividends if the topography of the country over which its tracks are laid favors low grades and easy curves. On the other hand, increased costs on either side mean higher prices or smaller profits; that is to say, each party should bear the burden of its natural disadvantages and is entitled to the benefit of its natural advantages. Each lumberman must endure his own disadvantages of one sort or another, of location, of ignorance or wastefulness, in competition with a lumberman having a better physical location or with a more careful and economical management. Transportation comes under these artificial accommodations, which the law designs to make equal and which should be made equal to all.

It has been urged that the special equipment of cars furnished by the railroads for the carriage of particular classes of commodities

where such equipment is additional to the usual form of the car has, by custom, been relegated to the shippers in the case of lumber. Such is not the case in all lines, or in any other line to any important extent, as we have shown; but it may be admitted that such has been the custom in the lumber and timber industry proper. The shipper of lumber and timber has been to a degree a manufacturer of railroad equipment for the benefit of the carriers. As has been shown by previous arguments, the railroad is able to use a cheaper car than the box car, and to carry on it a larger load, and therefore make a greater profit because of the work done by the lumber man and the expense incurred by him in completing the car for this business.

Mr. WASHBURN. May I interrupt you there to ask if it would satisfy your views if the railroads quoted two rates, one rate for box cars and a lower rate for gondola or flat cars—open cars?

Mr. BRONSON. I should think that that would be a simple way of doing it. Now, there is one rate. In the case of the box car the railroad furnishes us a complete car. In the case of the gondola car or the flat car they furnish us a partial car for our purpose, which we have to complete. Let them complete it and retain the rate unchanged.

Mr. STEVENS. But you did not quite answer Mr. Washburn's question as to what would be the effect if the Interstate Commerce Commission or Congress provided that there might be a different rate. How would that work?

Mr. BRONSON. I meant to imply that I do not think it would work very well.

Mr. STEVENS. Why not?

Mr. BRONSON. That is up to the judgment of Congress, of course. But we feel that our argument for completely equipped cars is so strong, the logic of it is so good, it is so in line with progress, with the spirit of the interstate-commerce act, that it ought to be possible to put that particular phase, that particular subject through.

Mr. WASHBURN. Do you not think there are some practical objections to it?

Mr. BRONSON. There are, undoubtedly.

Mr. WASHBURN. Do you not think it would be rather difficult for the railroads to equip gondola and flat cars with permanent stakes?

Mr. BRONSON. No, sir; I think that the mechanical ability of the engineering skill that made the automatic coupler a success and the air brake a success could, if it were required to do so, make permanent car stakes a success. It looks so to me. I am not a mechanical engineer. I do not know much about those things from a scientific or a technical standpoint, but it looks to me like a simple proposition. I think if a mechanic were required to make a removable leg for a table he could do it, and I think that the permanent car stake not permanently fixed in place, as Judge Richardson thought this morning, or as some one thought, but simply permanently attached to the car and always traveling with it so as to be available for use, is entirely practicable and can be worked out. It seems to me the only question is one of expense.

Mr. STEVENS. As I gather from the figures you gentlemen have given, the average cost of your equipping a car would be about a cent a hundred. That would be about it, would it not, as the figures have been given here?

Mr. BRONSON. \$3.50 a car. The average car in this country, I believe, carries about 17 to 18 feet, does it not, Mr. Babcock, the country over?

Mr. BABCOCK. I would say so.

Mr. BRONSON. About 20 cents a thousand, on the average. It runs sometimes much higher and sometimes somewhat lower.

Mr. STEVENS. That is per thousand feet of lumber?

Mr. BRONSON. Yes.

Mr. STEVENS. That would be about how many hundred pounds per thousand?

Mr. BRONSON. It is the weight of the equipment you are speaking of now?

Mr. STEVENS. No; I am speaking about the weight of the lumber.

Mr. BRONSON. The weight of the lumber?

Mr. STEVENS. I want to find out about how much per hundred, as you pay on your freight bills, the additional cost of this staking would be. I stated that I thought it would cost a cent, figuring it in my mind roughly as you were speaking. Would that about accord, or not, with your figures?

Mr. BRONSON. Let us see.

Mr. STEVENS. Supposing that the Interstate Commerce Commission or some act of Congress made a deduction of a cent a hundred, or that in some other way a deduction of a cent a hundred was made; if the railroads furnished you an open car or a gondola car, what would you say to that proposition?

Mr. BRONSON. Allowing us to stake it; allowing us to complete the equipment of it?

Mr. STEVENS. Yes; certainly, as you do now.

Mr. BRONSON. Yes. You would still have an uncertainty as to the rate, however. It would probably average about right; but averages do not go very well—grand averages—when you have a competition close by and intimate.

Mr. STEVENS. But that competition would be subjected to the same rules that you are.

Mr. BRONSON. The competition with us rests almost solely in the quality and price of lumber.

Mr. STEVENS. If you had an addition in quality, you would have an advantage. That would be so much less because of the value of your lumber.

Mr. BRONSON. Please state that again.

Mr. STEVENS. If you had a superior quality of lumber you would have that much advantage.

Mr. BRONSON. No, sir.

Mr. STEVENS. Because the 1 cent a hundred would be proportionately less on the more valuable lumber.

Mr. BRONSON. Mr. Stevens, you are getting into a pretty fine point. I think I would want to take a piece of paper and figure that out. I really do not feel competent to answer that offhand—that line of thought—except to insist that the rate should be as it has been.

Mr. TOWNSEND. Are you a lawyer?

Mr. BRONSON. No, sir.

Mr. TOWNSEND. I was going to ask you a legal question if you were. I thought your reasoning on the rates and on the duty of the

carrier to equip the cars and so on indicated that you had viewed this from a legal standpoint.

Mr. BRONSON. No, sir; I have never been so fortunate.

Mr. TOWNSEND. Or unfortunate. [Laughter.]

Mr. WASHBURN. You insist upon the fact that you are a man of good character, sir?

Mr. BRONSON. Well, sir, I try to be. I will mention two or three things only in addition, roughly, in regard to some of the practical phases of the matter. A defense as against the proposed requirement on the railroads is found in the claim that the furnishing of cars, cross strips, etc., for the safe carriage of lumber and timber is essentially crating, and as such forms a logical part of the package which as a unit the carrier is required to transport. It seems to us that a test as to the validity of this defense would be found in the answer to the question, "In what shape is the commodity tendered to the carrier? Is it tendered in a package or packages, in a carton or cartons, or is it, strictly speaking, carload freight to which the car is or should be adapted?" Unquestionably it is the latter.

In the Interstate Commerce Commission hearing on this matter a Pennsylvania Railway representative denied that stakes are a part of the necessary equipment of its cars. It might perhaps as well have denied that anything more than the ability to stand the load and to move under the burden is necessary in a car. Anything is a transportation facility which is necessary to the movement of an ordinary commodity which is handled by the railroads in large volume.

A representative of the Pere Marquette Railroad stated that in view of the custom to require that it should furnish cars constructed for this special service or stakes to adapt the cars to the service would be legislation and not regulation, the latter only being within the province of the Interstate Commerce Commission. If that objection was well taken, it is fully answered by the bill we support, which proposes legislative relief on this subject.

Too much stress has been laid, we think—and perhaps even in this argument—upon the existence of a custom by which shippers of lumber and timber furnished the stake and binder equipment. As a matter of fact, twenty years ago permanent stakes were used. The evidence before the Interstate Commerce Commission was that these stakes were practical and effective. They were abandoned, apparently, because the carriers were not obliged to use them, and being able to do so they preferred to put this expense upon the shipper. That still remains the case. The permanent-stake equipment of twenty years ago might not be adequate to the larger cars and heavier loads of the present time; but those were wooden stakes, whereas now steel is proposed and available. Lumber shippers believe that this question of practicable and durable stakes has been solved for the railroads by their own experiments, and even if no suitable equipment had yet been invented that it should be a simple matter for the car builders to solve the problem. We believe they would do so if required. No such difficulties are to be encountered as in complying with the requirements for automatic couplings or air brakes.

Considering the fact that by the use of stakes flat and gondola cars, which ordinarily cost from one-half to one-third of a box car of similar capacity, can be made to carry a heavier load and yield a greater revenue to the carrier, we believe that no hardship would be entailed

upon the railroads by the passage of this bill. It is in the interest of sound economy and forest conservation, for the cost of equipping open cars with permanent stakes would not exceed the amount the lumbermen contribute to the railroads in one year in the shape of temporary stakes, of which not to exceed 10 per cent are ever used the second time as such, and only a small part of the value of which is ever recovered.

Mr. TOWNSEND. The railroad company does recognize the fact that this is a part of the equipment, does it not, by requiring a specification as to how those stakes shall be put on and how constructed?

Mr. BRONSON. Certainly. Suppose they would say that they required the package to be put up in such shape that it is not susceptible to damage; but it is for their own protection that they are so rigid in their requirements, or are proposing to become so rigid.

Mr. STEVENS. Is it not about the same rule as that under which they require a package to be delivered to them in good, substantial condition, and so that it can stand the strain of the trip and not damage itself or the equipment of the company?

Mr. BRONSON. Oh, that is true. I do not think the railroad companies care much about whether the article itself is damaged by itself, as long as it is not their fault and so that they will not become responsible for it.

Mr. KENNEDY. The railroad company's cost, then, of handling lumber on a gondola car, you furnishing the stakes, is considerably less than the cost of carrying the same traffic in a house car?

Mr. BRONSON. Simply because of the greater amount of net tonnage.

Mr. KENNEDY. And you say the car itself costs less?

Mr. BRONSON. The car itself costs less, yes.

Mr. KENNEDY. So that in figuring up the costs of the transportation, the cost to the railroad company would be less in shipping in a gondola car or a flat car than it would be in shipping in a box car?

Mr. BRONSON. That is believed to be true. I do not think the railroads would question that particular point.

Mr. KENNEDY. So that if a reasonably compensatory rate to the railroad is the rule, would it not be perfectly logical and correct to have a lower rate for lumber shipped on a gondola car or a flat car?

Mr. BRONSON. It would seem so. There are serious questions in this, gentlemen, of principle; not merely as to our profits or the profits of the railroads, but as to the respective duties and rights of the parties. Those must be represented in the price and the rate which business must pay, or it can not go on. Mr. Townsend, I think, asked if he bought his lumber whether he would pay extra because of the car stakes. He would pay no difference in the price list, but everything has to be paid for in this world by somebody sooner or later, and in the grand wind up it is distributed among all of us. Now, we are anxious to get a fair distribution.

Mr. STEVENS. I see your association, among others, has no price list.

Mr. BRONSON. Yes, sir; we pay no attention to price lists. We make no price list and never shall. We do not even say what we think lumber is worth, which is as far as any association goes to-day. This is not, of course, a trust investigation; but I would just like to suggest to you gentlemen that the lumber business is conducted very

much like your own or any other business. We used to try to make prices, ironclad prices. We have had lists, and I have known of cases where penalties were imposed for violation of list prices. They did not amount to anything. I do not think there was ever a case where those ironclad rules did not go up within three months, and almost always they would be broken wide open before the day was over.

Mr. KNOWLAND. I will state, being interested in the lumber business some, that we had that experience on the Pacific coast.

Mr. BRONSON. But we have accomplished something in regard to lumber prices. If we can impeach the man who has been throwing away his stumps, who has been wasteful in all his methods; if we can arouse him and convince him that this thing costs him something and that thing costs him something and the other thing costs him something, he begins to take notice before long, if he has any sense; and that is the lumber trust to-day—an educational organization.

Mr. ESCH. The effect is reached by moral suasion?

Mr. BRONSON. Yes, sir; the idea is to convince a man that he is losing money where he ought to be making something.

Mr. BABCOCK. We have here Mr. James S. Davis, of New York City, who is an arbiter pure and simple and who is simply here as a sympathizer as to the justice of our claim. If you would like to interrogate him as to the prices or as to what becomes of these stakes when they go into the retailers' hands, we would be glad to have you do so.

Mr. STEVENS. If you have anything new that has not already been stated, we would like to hear it.

Mr. BABCOCK. I thought you might be interested in asking Mr. Davis something.

Mr. STEVENS. Very well.

STATEMENT OF MR. JAMES SHERLOCK DAVIS, OF NEW YORK CITY.

Mr. DAVIS. It might, perhaps, be enlightening a little on what I am going to say to tell you the nature and the magnitude of the business which I happen at the present time to be the head of. We have a retail yard in Brooklyn at the head of Newtown Creek, at the head of the East River, where we have 30 acres of piling ground and with a half a mile of water front, on which there is at present 30,000,000 feet of lumber piled up. We have also, over on the Harlem River, another place where there is 5,000,000 feet of lumber. That lumber consists of everything from the Pacific slope to Maine, up to the highest grades of hard wood. We stop at lumber such as quartered oak. Of course we receive a great deal of lumber by rail, but we receive the bulk of it by water.

When the cars are coming in the car-stake proposition is something we do not know much about; we never see the stakes. But when we are shipping out, we have to furnish stakes a part of the time and part of the time we do not. I do not know whether the Long Island Railroad comes within your jurisdiction. There they used to have cars with fixed stakes. Sometimes they were of very great benefit to us and at other times they were a great nuisance, but on the whole I think they were more beneficial than detrimental;

but it always appeared to us it would be a very simple matter to bolt a stanchion to the side of the car so that the stake might be dropped down and bolted when you did not want to use it, and when you did want to use it it could be brought up and you could bolt it up.

We do a great deal of business with trucks. This business is the delivery of large yellow-pine timbers and Washington fir. Sometimes we use stakes and sometimes we do not. Another kind of shipments we make is by lighters. These shipments are delivered from New York to Jersey, and there we can get a lighter to come to our dock, and they allow us something for putting the lumber on the lighter. They load it on the cars, and we never see the car stakes. That is not a very important part of the business, but it has a bearing on this car-stake business. My impression is that they save the car stakes as they come in from these shipments, and either the yardman gets them or they use them over again. I know years ago, as a matter of general information, ten or twelve years ago, we used to have railroads where the master man in charge of the yard would corral these stakes and sell them for wood, or sell them over again to shippers for car stakes; but I think that is pretty well cleared up at the present time.

Mr. STEVENS. You do not know just what becomes of the great number of stakes that goes into a city like New York?

Mr. DAVIS. Generally, they are carried off by the men and boys around the yards and used for stove wood; the same as they break into our yards and carry off the refuse that comes there. In a measure we are glad to have them carry it away, the pieces that come from our broken tops and the refuse from the Georgia pine timber; if we could give it to people so that they would keep out of our yards and not run the risk of getting hurt by coming in there, we would be very glad to give it to them and have them keep away.

I do not know that I can say anything more of interest, if, indeed, anything I have said has been of interest. Any questions you would like to ask in regard to the prices and values of lumber I would be glad to answer.

Mr. WASHBURN. What would you say as to the proposition of having a lower rate for lumber shipped on open or platform or gondola cars?

Mr. DAVIS. That would work a hardship to the retail yard from the fact that the manufacturer, if he got a lower rate on a box car, would put stuff into a box car that ought never to go into a box car, and we would have the devil's own job getting it out.

Mr. WASHBURN. You would have a lower rate on the gondola car?

Mr. DAVIS. We would not get it. The stuff that is bought by us is laid down there. Our prices are practically all based on the material laid down at the dock or at the nearest station. The rate therefore does not cut any figure with us so long as we know that the rate is uniform.

Mr. WASHBURN. You think they would then ship lumber in a box car that ought not to be shipped in a box car?

Mr. DAVIS. Yes; they do it now, sometimes. It is a proposition sometimes of its being harder to take a thing off than to put it on.

Mr. STEVENS. Is it not more work to get lumber out of a box car than out of a staked car?

Mr. DAVIS. That depends on what your lumber is, and it depends a little bit on the length of the car. In speaking of the lumber here I am speaking in the broad sense where we include yellow-pine timber and spruce timber that goes into the construction of a building. Good white-pine lumber ought, for instance, to be shipped in a box car, and taking white-pine lumber, it is harder to get it out of a box car than to take it off of a gondola car.

Mr. STEVENS. So that, so far as you are concerned, you would rather have it go in an open car?

Mr. DAVIS. No, sir; it depends on the grade. The damage in transportation on high-grade lumber is very great. As to low-grade lumber, I would say yes; I would rather have it go in an open car. When I say "low-grade lumber" I must qualify a little there. Yellow-pine timber and all that class of timber which goes in the superstructure of a house is low-class lumber, and it is not damaged much by transportation from the weather. When you come to the transportation of sash, doors, and blinds, and so forth, for use on the inside of a house, that material should certainly be transported in a box car.

Mr. STEVENS. Would not that take care of itself, in that a manufacturer could not afford to ship high-grade lumber for 1 cent a hundred cheaper because the damage would be too great?

Mr. DAVIS. No, sir. To-day there is a contest between the shipper and the yard man in regard to how he shall ship his stuff. He will take the car usually which is easiest for him to get, and we have to go to the trouble of specifying on our car blanks at times that certain lumber must be shipped in a box car; just as in a vessel we have to specify that certain grades of lumber—North Carolina, principally—must be shipped under decking, but common stuff can be shipped on deck. I have two vessels at my yard to-day on which the stuff was shipped on deck, and that stuff is all wet and stained. There will be a claim of \$1 a thousand for extra handling on that to lay it out and dry it out.

Mr. WASHBURN. But that comes out of them and does not come out of you?

Mr. DAVIS. It comes out of them in this case, because we have not paid the bill yet.

Mr. WASHBURN. I have observed, in my small experience, that the seller is usually at the mercy of the buyer. [Laughter.]

Mr. DAVIS. Yes.

Mr. STEVENS. Is there anything else?

Mr. BABCOCK. I think, gentlemen, that concludes everything that we want to present to you. I want to say just a word about this matter of substituting saplings. In the practice in our business in our Pennsylvania lumber we have admitted the use of saplings in the place of the 3 by 4 or the 4 by 5, as may be specified. That is because of the nature of our woods. The product there supplies saplings and we can get them cheaper than we can afford to saw the 3 by 4 or 4 by 5 lengths, and we have a ready market for our sawed material. That, however, is not true in our Tennessee operations, where our timber is of a larger and older growth, and we have no young, thrifty timber from which to cut these saplings. The same thing applies in West Virginia. I simply mention that because there might develop in the study of this question the inquiry, if one man uses saplings, why do we not all use them. In some cases it is physi-

ally impossible, and we have to go in the woods and saw 4 by 5's in West Virginia because the forest there does not supply the growth of timber that supplies the saplings. We have here one photograph taken by a West Virginia lumberman. It shows a rather unusual car. I leave this with you simply for your information; and I have a lot of photographs here which I will leave with you, marked "Exhibits A to K."

Mr. STEVENS. They can not be inserted in the record, of course.

Mr. BABCOCK. No; they are simply for your study if you want to see them. In my paper I referred to a recent burden that is imposed upon the lumberman in staking bark cars. That is only in the last two or three years. I have mentioned on the back of these what they are, so that if you care to study them or look at them they will be here for your convenience.

Mr. STEVENS. We will be glad to have them.

Mr. BABCOCK. I have here a letter from Mr. Barth, of Chicago. I will simply file it, as I do these other things. It simply tells how they are confronted out there, as in the different localities. I will file it with the others. I think that is all we have to offer, and we thank you very much for the attention given us.

Mr. BRONSON. There is one more point that I omitted to bring out. Probably the railroad representatives or the parties representing the railroad companies will make the statement to-morrow that there has been no car stake invented yet that is practicable, that can be used, practically, with any degree of satisfaction. There is a party down in our State who has sent me some models to-day of a new car stake, which he has invented, which we consider far superior to anything that has yet been produced. I have not brought those models here. I hardly supposed that they would be the proper thing to present to this committee. If you think that they do come under your jurisdiction, or if you want to look at them for the purpose of arriving at any conclusion, to combat the argument on the other side that car stakes can not be produced that are practicable, I will be pleased to leave those models with you. They have not yet been tested practically.

Mr. KENNEDY. Have you them here?

Mr. BRONSON. Those models were to be shipped to me at the New Willard Hotel. They were to be delivered to me to-day.

Mr. KENNEDY. It might be interesting for us to have them to-morrow.

Mr. BRONSON. Up to the last inquiries I made they had not arrived yet. By looking over the records you will find that there are something over 100 different car stakes which have been patented, but this we consider superior to anything that has been patented yet.

Mr. STEVENS. We have jurisdiction, of course, over everything, but we are not to decide the question of the kind of stake to be used.

Mr. BRONSON. I understand that.

Mr. KENNEDY. We only have to decide the question as to whether it is practicable to have them placed on the cars or not.

Mr. BRONSON. Yes. We take the position that it is practicable.

(At 5 o'clock, p. m., the committee adjourned.)

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HEARINGS

BEFORE THE

**COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
OF THE HOUSE OF REPRESENTATIVES**

ON BILLS AFFECTING

INTERSTATE COMMERCE

PART III

WASHINGTON
GOVERNMENT PRINTING OFFICE
1910

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES.

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BILLS AFFECTING INTERSTATE COMMERCE.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Thursday, January 27, 1910.

CAR-STAKE BILL.

The committee was called to order at 10 o'clock a. m.

The CHAIRMAN. You may proceed, gentlemen.

Mr. FAULKNER. This hearing is in reference to the car-stake bill, and Mr. Rich, of the Boston and Maine Railroad, was chairman of the committee that had charge of that matter, and he will suggest the different witnesses and the order in which they will come.

The CHAIRMAN. Very well.

STATEMENT OF MR. LEWIS E. CARR, COUNSEL FOR THE DELAWARE AND HUDSON COMPANY.

Mr. CARR. Mr. Chairman and gentlemen of the committee, I am here representing the railroads in the classification territory largely, I suppose, because I was counsel in connection with the case that was before the Interstate Commerce Commission, as to which something has already been said. But I assume probably it was because of the knowledge that I had acquired of the subject that it was desired that I should come before this committee and state to the members of it the views I entertain in behalf of those whom I represent with regard to the pending bill.

I have taken the liberty of furnishing a printed copy of the opinion of the Interstate Commerce Commission in the case that was before them to each member of your committee, so that they may have before them precisely the thing that was involved in that case, together with the decision that was rendered, and then they will be able to see that there is nothing, so far as this bill is concerned, excepting an attempt to appeal to a committee of the House of Representatives from a decision of the Interstate Commerce Commission.

It was stated to you yesterday, possibly not directly, but inferentially, that the Interstate Commerce Commission dismissed the petition in that case because they did not have any power.

The CHAIRMAN. Just one moment. We will have printed in the record this opinion of the Interstate Commerce Commission to which you have referred.

(Following is the opinion referred to:)

[No. 827. National Wholesale Lumber Dealers' Association et al. v. Atlantic Coast Line Railroad Company et al. No. 828. National Wholesale Lumber Dealers' Association et al. v. Pennsylvania Railroad Company et al. No. 873. Pacific Coast Lumber Manufacturers' Association et al. v. Atchison, Topeka & Santa Fe Railway Company et al.]

Submitted January 9, 1908. Decided June 23, 1908.

For many years railroads have required that shippers of lumber on open cars shall stake and secure loads for safe carriage. Rates of freight have been made with reference to such requirement, which grew out of the custom of conducting lumber business and antedated by many years the passage of the act to regulate commerce. It appears that the custom is economical, and that no injustice to shippers has resulted: *Held*, that upon all the facts and circumstances disclosed by the investigation the regulations of defendants which require shippers of lumber on open cars to stake and secure loads for safe carriage are not unjust or unreasonable.

Walter W. Ross and William A. Stone for complainants.
Adelbert Moot, Lewis E. Carr, Herbert & Micou, Sidney F. Andrews, Frederick C. Bryan, Robert Dunlap, T. J. Norton, Gardiner Lathrop, T. B. Harrison, Jr., S. A. Lynde, Hale Holden, Edgar J. Rich, and F. C. Dillard for defendants.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

These cases present the same question, they were heard together, and may properly be disposed of in one report.

The complaints in Nos. 827 and 828 involve the principal railroads operating in Southern and Official Classification territory, respectively. The complaint in No. 873 involves the principal railroads operating in Western Classification territory. In substance and effect the complaint in each case alleges that certain regulations of defendants which require shippers of lumber and forest products, when using gondola or flat cars, to load to a prescribed minimum weight and to furnish at their own expense stakes, racks, binders, or other appliances to hold shipments on cars when in transit, are unreasonable and unjust. It is also alleged that it is the duty of defendants to provide proper equipment for the transportation of lumber and forest products, and that the rates charged by defendants for transporting such shipments on gondola or flat cars equipped with stakes, binders, or racks at shippers' expense are unreasonable and unjust to the extent of the cost of such equipment. Complainants therefore pray that defendants be required to furnish shippers of lumber and forest products with open cars properly equipped to hold and transport their shipments, and that whenever defendants provide open cars for such shipments which are not properly equipped an allowance be made to the shipper for the cost of stakes, racks, and binders furnished by him—to wit, \$5 per car.

Complainants, including a number of interveners, are associations of manufacturers of and wholesale dealers in lumber and forest products, and are said to represent about 12,000 individuals and companies doing business in different parts of the country.

The word "lumber" will be used herein to include all forest products.

Lumber furnishes railroads generally with a very large tonnage. It is estimated that 136,000,000 tons are transported annually by railroads in this country. Assuming that the average carload weighs 40,000 pounds, the total amount would require 6,800,000 cars for its movement. This estimate includes long and short hauls, and while it does not furnish an accurate basis for determining the aggregate earnings from lumber, it is sufficient to show that this traffic is amongst the most important transported by railroads. Railroads furnish box, gondola, and flat cars to transport lumber. No special equipment is ordinarily required to hold shipments in place in box cars. Gondola and flat cars are fitted with holds or pockets into which stakes and braces may be put to hold shipments in place while in transit.

The Master Car Builders' Association prescribes rules for loading lumber and other traffic on open cars, and directions for staking and binding the same. From time to time these rules and directions have been modified and changed to meet new conditions, and those now in force are presumably such as experi-

ence and prudence have dictated. These rules, however, are directory rather than mandatory, and it appears from the evidence that they are not fully and strictly observed by any important railroad system except some of those operating in Official Classification territory. In actual practice loading and staking must be done in a manner satisfactory to inspectors of each road, and where delivery is made by one road to another the loading and staking must be approved by inspectors of the receiving road.

In the country at large it is estimated that about 60 per cent of lumber shipments is made in box cars, and it appears that from two-fifths to one-half of the remainder might be so shipped. Box cars are generally used except in cases where the shipper or consignee orders otherwise, where there is a shortage of box cars, or where shipments are of such a character that they can not be loaded in box cars. Some shippers prefer open cars because they can be loaded at less expense than box cars, and for the similar reason, that they can be unloaded more conveniently and at less expense; consignees frequently request that shipments be made to them on open cars. Moreover, open cars carry more lumber, because they can be loaded to their marked capacity, which generally exceeds the space capacity of box cars, and this is an inducement to shippers to use open cars in filling orders for carload shipments.

Shipments of lumber include bark, cord wood, ties, lath, telephone and telegraph poles, logs, large-dimension timber, poles, and logs requiring more than one car, light dressed and finished lumber, etc. Each separate carload of these different kinds, when open cars are used, requires peculiar loading, staking, and binding to insure safe carriage. Many kinds of lumber are frequently offered for shipment by one producer at a given point, or may be shipped by a number of producers in the same locality. As a general rule there is no uniformity in the character of shipments from any section of the country; that is to say, logs and dimension stuff do not originate in one region and sawed and dressed lumber in another region, but each producing section furnishes a greater or less variety of shipments. A particular mill may ship only dressed and dried lumber, but a mill near by may ship only rough lumber and large-dimension timbers. Requests of shippers for cars in most instances depend upon the demand at receiving and consuming markets, and therefore conditions with respect to shipments vary greatly at different producing and shipping points. Some producers and shippers use box cars almost exclusively and to a similar extent others use open cars. Lumber that is kiln-dried, dressed, surfaced, or otherwise finished must be shipped in box cars to prevent injury from cinders, smoke, and storms. Large-dimension timber, logs and poles, and lumber of too great length to be loaded in box cars can be shipped on open cars only. It does not appear what percentage of the total amount of lumber shipments must be transported on open cars, but leaving out of the calculation logs and poles it is believed that a comparatively small percentage remains. The evidence seems to show that box cars might be used to a much larger extent than is now the case except for the preference of shippers and consignees for open cars or the inability of carriers to furnish sufficient box cars.

There are said to be more than 21,000 sawmills in the country, many of which are owned or controlled by wholesale lumber dealers. Many mills are located at some distance from main lines of railroad and are reached by branch lines, or are served by independent lines owned and operated by mill owners. All the more important and best equipped mills, whether located on branch lines in the midst of forests or alongside main lines in cities and towns, are fitted with tramways and appliances for loading lumber on cars. Mill owners and shippers at all points employ men skilled in loading and staking cars. So far as appears, shippers from Pacific coast points are the only ones in the country who make direct charges to consignees for the cost of staking and binding loads of lumber.

The cost of staking varies with each region of production, with different parts of the same region, and with different and adjoining shippers. The cost as shown by the evidence depends upon where the loading is done, the character of lumber used for staking, and the care with which the individual shipper loads and stakes his shipments. Where loading is done at mills in forests, saplings and waste stuff are generally used for stakes and binders, and the cost in many cases is merely nominal. At points of distribution in inferior cities far removed from sources of production the cost is considerable. From this record it is not possible to arrive at the average cost. There is nothing to show the number of cars loaded with any particular kind of lumber or the cost of the different stakes used, and therefore no basis exists for any computation.

that is reasonably accurate. The cost of staking certain shipments on different roads and at different points can be cited, and the cost of a number of such instances averaged, but it is obvious that this does not fairly show the actual cost for the whole country. It would be necessary to know the number of cars shipped where the cost is nominal, the number shipped where the cost is the highest, and the shipments at the varying costs between the two extremes before any substantially accurate average could be reached. Counsel for complainants place the average cost at \$3.50 per car, but it is believed that this estimate is too high when all shipments are taken into account. Inasmuch as the record does not furnish an adequate basis on which to calculate with even approximate accuracy the average cost of staking, no definite finding with respect thereto will be attempted.

Stakes and binders for the most part are temporary equipment and not often used for more than one shipment. It does occur at interior distribution points, where lumber is received and reshipped in carloads, that stakes and binders are preserved and used more than once, but as a rule they are not used a second time, and are sold for firewood or otherwise disposed of at destination.

Gondola and flat cars are used extensively to transport many other commodities, which are loaded, staked, and blocked by and at the expense of shippers. These commodities include iron pipe and tubes, structural iron and steel, vitrified pipe, cars, engines, boilers, dynamos, pumps, farm machinery, and many others. Each of the above requires to some extent peculiar equipment, consisting of racks, stakes, binders, and blocks, to hold shipments in place during transit, and the expense of this equipment, in many instances, is much greater than that required for shipments of lumber. Shipments of iron tubing, dynamos, electrical supplies, and farm machinery are very extensive, exceeding in volume on some roads those of lumber.

Gondola cars made of steel, of peculiar type and large capacity, are used to transport coal and are mainly provided for that traffic. Cars fitted with racks for exclusive use in coke shipments are supplied by some railroads, but they are not in general use; they are confined for the most part to the few great coke-producing regions where the hauls are comparatively short. Stock cars are used extensively in transporting coke. Gondola cars of ordinary type are largely used to transport coal, ores, brick, and like commodities which do not deteriorate from exposure.

Box cars are fitted with inside doors for shipments of grain, and these doors, when not in use, are fastened inside the cars by chains. If they are broken or lost shippers supply them and are usually allowed 40 cents for each one thus furnished. These inside doors are used to prevent the grain from wasting through the more loosely hung outside doors of the cars and as a protection from rain and snow. They are all of the same general design and of practically uniform cost.

On the date the first complaints were filed in these cases (July 14, 1905) an allowance of 500 pounds was made in Southern Classification territory to shippers using open cars which required stakes and binders, but no such allowance was made generally in Official and Western Classification territories. In Official Classification No. 26, dated January 2, 1905, appears the following:

"RULE 19 (A). An allowance of 500 pounds weight will be made for racks on flat or gondola cars if loaded with freight requiring their use."

This rule had been in force for a number of years prior to 1905. Rule 19 (A) was amended as follows:

"NOTE.—An allowance of 500 pounds is not authorized by Rule 19 (A) to cover stakes used on flat cars or gondola cars loaded with lumber."

During the progress of the hearings in these cases the principal railways operating in Official and Western Classification territories agreed to make an allowance of 500 pounds for racks, stakes, and blocks furnished by shippers on flat and gondola cars loaded with freight requiring their use, and at this time there is a provision to that effect in the three classifications controlling shipments from and to practically all points in the country. It appears, generally speaking, that the stakes and binders used weigh about the amount of the allowance.

Experiments were made by railroads in different parts of the country late in 1906 and in 1907 with patented steel stakes designed to be permanently attached to open cars for lumber shipments. A large number of such stakes were presented to a committee chosen for the purpose by carriers and lumber shippers, and two were selected to be put into service in order to test their

efficiency. These stakes are ingeniously arranged, so that they can be lengthened or shortened as shipments require, and when not in use can be laid down at the sides of the cars. It also appears that at various times in years past railroads have tried other types of steel stakes. The cost of equipping cars with the permanent stakes put into experimental service on several roads varies, in the estimates given, from \$40 to \$60 per car. It is insisted by defendants that no permanent stake has yet been invented which is practically usable for the varied shipments made on open cars; that the same stake would not meet the needs of greatly varying kinds of lumber, including timber and logs; and that stakes suitable for holding lumber would be more or less in the way and liable to be broken or bent in loading other traffic. It is also claimed that the percentage of open cars used for lumber shipments is comparatively small; that it is impracticable to set apart a portion of the open cars to be used for lumber traffic; and that to equip all open cars with permanent stakes, in order to provide for this commodity, would therefore involve a disproportionate expense, besides lessening in some degree the usefulness of open cars for other traffic. It is further shown that eight steel stakes would weigh from 750 to 1,200 pounds, and that the carriage of that additional dead weight upon open cars, whether used for lumber shipments or not, is an item to be considered in connection with their adoption as permanent car equipments. Evidence respecting the practical utility of permanent steel stakes of any kind, and particularly with respect to those tested in service, is in sharp conflict. It is earnestly maintained by defendants that these steel stakes proved valueless for shipments of lumber, and it is just as earnestly maintained by complainants that they were a complete success wherever they were subjected to proper tests, and that it is entirely feasible and practicable to apply steel stakes permanently to open cars for lumber shipments. The view we take of the matters in controversy obviates the necessity of a finding of fact in this regard, even were it possible to determine the question on the evidence submitted.

Ever since the inception of railroad transportation shippers have, generally speaking, loaded and their consignees have unloaded carload freight. This practice, or custom, arose naturally because it was the easiest, most economical, and satisfactory way of doing the business. It is practically out of the question for railroads to provide men to load and unload carload freight at all points in the country. The shipper can load more satisfactorily and economically than anyone else. He is able to possess himself of effective appliances, where they can be used, and to employ skilled men to properly load all carload traffic, whether shipped in closed or on open cars. For the same reasons consignees are the best fitted to unload shipments. For more than fifty years the loading by consignor and unloading by consignee has been a recognized rule of carload transportation, and this rule extends to and includes commodities which yield to carriers the larger part of their revenue. With this custom, and as properly a part of it, there has always existed another custom, which is that shippers are required to secure loads for safe carriage. Because the shipper does the loading he is best situated to fasten the load upon the car. He has the facilities and men at hand and can do the work more satisfactorily and economically than anyone else. Staking the load is in reality a part of the operation of loading, and in the case of lumber it appears that as a practical matter at least one side of the car must be staked before the load can be placed. The custom of staking the load by the shipper dates from no later period than the custom of loading the shipment by him. The work of loading and staking is not confined to shipments of lumber, but extends to and includes shipments of a great variety of commodities, which, because of their nature and character, must be shipped on flat or gondola cars. It seems that the staking of lumber is done more easily and at less expense than is the case with many other commodities shipped under similar conditions.

Transportation by railroad has grown with the expanse of business generally and now embraces a vast number of commodities that differ not only in kind, but also in shape and size. Even the same article is frequently shipped in different forms which require different modes of handling. The evidence in these cases shows that no one type of car or equipment would be serviceable for all kinds of lumber shipments. Indeed, it is manifest that equipment suitable to hold poles 60 to 80 feet in length upon cars for safe conveyance would not be serviceable for a shipment of cord wood, and that which might be used to hold bark in place would be ineffectual to hold a load of logs or large-dimension timber. The loader in the case of a shipment of cord wood is required to furnish sixteen or eighteen stakes from 8 to 12 feet in length, but in

the case of a shipment of logs only eight stakes 3 or 4 feet long. The stakes and binders must be made to fit the load, since the load will not often fit any particular set of stakes.

Rates charged by defendants for shipments of the same kind of lumber in box and open cars are the same, but it seems to be more expensive by perhaps as much as the average cost of the stakes to load and unload box cars. Of course the difference varies materially with different conditions. The evidence shows that the empty-car movement of open cars to points of production of lumber is much greater than that of box cars, on some roads reaching 87 per cent. and on most of the roads in the country more than 60 per cent. It does not appear that there is any undue discrimination between shippers of lumber who use box cars and those who use open cars. In many instances it is optional with the shipper whether he uses one or the other, and in frequent cases he uses the open car from preference or at the request of his consignee. All lumber that must be carried in open cars bears the same rate as that which requires box cars, and under all the circumstances the fact that the rates are the same on each kind of car works no hardship to any shipper so far as the record discloses. Aside from these proceedings, it has not been claimed or suggested in any of the numerous lumber cases brought before the Commission that any difference should be made in rates as between box-car and open-car shipments because the latter must be furnished with stakes at shipper's expense. Indeed, it might well be contended that a lower rate on open cars, or an allowance for staking, would be a discrimination against box-car shippers.

It is also to be remembered that rates of freight on carload shipments have been made and are maintained with respect to the customs mentioned. Because shippers load and consignees unload carload freight railroads justify in part the differences in rates between carload and less than carload shipments. In the cases of *Central Yellow Pine Asso. v. Illinois Central R. R. Co. et al.*, 10 I. C. C. Rep., 532, 575, and *Tift et al. v. Southern Ry. Co. et al.*, *Ibid.*, 505, 549, the fact that shippers furnished and attached stakes to hold shipments of lumber on open cars was one of the elements considered by the Commission in reaching the conclusion that an advance of certain lumber rates was unreasonable. If carriers were required to furnish stakes for lumber shipments, or to pay an allowance equal to their cost, it might furnish an excuse for an advance in lumber rates to correspond to the additional expense. It is also to be considered in this connection that the same arguments as are advanced in these cases might be equally urged in behalf of shippers of a great variety of commodities which are transported upon open cars and which require stakes, blocks, and binders to hold them in place.

The lumber business has been conducted for many years with reference to the custom of loading and staking carload shipments by shippers and is now firmly established on that basis. Lumber has been bought and sold for more than fifty years under the conditions that now exist. It is contended by complainants that it would be practicable, if an order were made by the Commission, to grant an allowance to lumber shippers based upon the cost of stakes furnished. It seems clear to us that there is little warrant for this contention. The cost of stakes varies materially between shippers, localities, and shipments. Any sum which would fairly recompense one shipper might prove to be wholly inadequate for another, and more than sufficient in the case of a third. In view of the great variety of shipments, the cost of staking varying with each, no allowance could be made which would be just to all and which would not lead to endless discriminations and consequent injustice. Estimates of the cost of stakes made by witnesses range from 25 cents to \$7 per car, depending upon the circumstances attending each particular shipment. An allowance to one shipper whose shipment moves but 100 miles would bear a very material relation to the rate he pays, whilst in case of a shipment for a distance of 2,000 miles the same allowance would be of little account in its relation to the rate.

It is true that inside car doors are furnished for shipments of grain in box cars, and that an allowance is made to shippers who furnish such doors; and this is said to be a discrimination against the shippers of lumber. Furnishing inside car doors to shippers of grain is a custom that dates from about 1879, and the presumption is that rates are maintained with respect thereto. The cost of the doors is practically the same in all cases, and special reasons induced railroads to furnish them. Grain and lumber are not competitive articles, and the fact that extra doors are provided for grain shipments is quite insufficient to establish a charge of undue discrimination against the shippers of lumber.

It is further contended that special equipment is furnished shippers of coal and coke, and that lumber is a commodity shipped under circumstances that

warrant defendants in furnishing similar equipment therefor. We do not understand that complainants ask that any special kind of car shall be provided, but that stakes shall be furnished on open cars now supplied, or that an allowance be made if stakes are not furnished. In certain localities and on a few railroads special coal and coke cars are furnished, but it is to be borne in mind that coal and coke are always of the same character and are carried in one style of car; that shipments from the great producing fields are for comparatively short distances; and that these cars are mainly confined to the commodities they are designed to transport.

Flat and gondola cars used in shipments of lumber are also used for many other kinds of traffic which require appliances to hold the load in place. Shippers of lumber on open cars stand in precisely the same position as shippers of farm machinery, iron pipe and tubes, electrical supplies, and a great variety of other commodities which are uniformly shipped on open cars. If there is any difference, the lumber shipper is favored, because in much the larger percentage of his shipments he may use the box car, which requires little or no equipment to be furnished by him.

The rules and regulations complained of in these cases have been maintained during all the years of the growth of the great lumber business of the country. The practice of loading and staking, which began with the first shipments on railroads, has been the common usage of the business. There does not appear to be anything unreasonable or unjust to shippers resulting from the custom. It has grown up with the development of railroad transportation, and antedated by many years the passage of the act to regulate commerce. In administering the statute it is manifestly unwise to interfere with established usages unless they plainly offend its provisions and in a substantial manner abridge rights it was designed to protect.

It is deemed unnecessary to consider certain questions of law which have been ably discussed in the briefs of counsel and in oral argument, because we find and decide upon all the facts and circumstances disclosed by the investigation that the regulations of defendants which require shippers of lumber on open cars to stake and secure the loads for safe carriage are not unjust or unreasonable.

It follows that the complaints should be dismissed, and it will be so ordered.

CLARK, Commissioner, dissenting:

There is a clear distinction which should be recognized and maintained between the obligations which fairly rest upon the carrier and those which it may properly impose upon the shipper. If a shipper requests a certain kind of car, or if he must have a certain kind of car, for his shipment it is proper that he should be required to secure his shipment upon or within the car by appropriate blocking, staking, or otherwise, and so protect it from damage to itself; but unless the shipper requests or requires a certain kind of car the carrier should provide a car which will substantially serve the shipper's purpose without additional equipment being furnished by the shipper at his own expense.

Lumber is shipped in both open and closed cars, and the rates are the same whatever car is used. It does not, therefore, seem that the rates have been adjusted with a view to the expense of staking open cars. If a shipper has a shipment of lumber to move and can use either a closed or an open car, and does not request an open car, and the carrier, for its own convenience, furnishes him an open car, it is simple justice that it should be so equipped by the carrier as to perform for the shipper substantially the same service which the closed car would perform. If the shipper is obliged to have or prefers to have an open car, and so indicates in his demand upon the carrier, it is not unreasonable to require the shipper to provide such stakes, blocking, etc., as will secure his load upon the car which he is obliged to have or which he prefers to have.

Tariff regulations carrying out these ideas would be clear and simple, and, once established, would remove many questions of controversy as to what is and what is not the carrier's duty.

For these reasons I am unable to agree with the conclusions of the majority opinion in these cases. I am authorized by Commissioner Harlan to say that he concurs in the views herein expressed.

ORDER.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 23rd day of June, A. D. 1908. Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, commissioners.

[No. 827. National Wholesale Lumber Dealers' Association et al. v. Atlantic Coast Line Railroad Company et al. No. 828. National Wholesale Lumber Dealers' Association et al. v. Pennsylvania Railroad Company et al. No. 873. Pacific Coast Lumber Manufacturers' Association et al. v. Atchison, Topeka and Santa Fe Railway Company et al.]

These cases being at issue upon complaints and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its conclusions thereon:

It is ordered, That the complaints in these proceedings be, and they are hereby, dismissed.

MR. CARR. Now, I want to call your attention to what appears upon the first page of the decision of the commission, where it is held—

That upon all the facts and circumstances disclosed by the investigation the regulations of defendants which require shippers of lumber on open cars to stake and secure loads for safe carriage are not unjust or unreasonable.

You will see that they did consider the question upon all of the evidence presented, and came to the conclusion that the regulations upon which the complaint was made were not unjust or unreasonable.

Now, there are a few things in this bill to which I wish to call the attention of the committee, because they illustrate a good deal of what I may hereafter say. In the first place, on page 3 of the bill the term "transportation" is changed by including the matter of stakes and blocks, and various things of that kind, which they call "instrumentalities," to be furnished by the carrier. I won't read the whole of it, but that constitutes it in substance. It is a broadening of the term "transportation" as it exists in the act of 1887 regulating commerce.

THE CHAIRMAN. It has not been as long as that since there has been a change in the term "transportation."

MR. CARR. But in no such broad and sweeping way as is stated here.

THE CHAIRMAN. Do you think it has considerably broadened it?

MR. CARR. Very much broadened it; yes, sir.

Now, on page 4 it states:

It shall be the duty of every carrier subject to the provisions of this act to provide and furnish such transportation.

That is the "transportation" that is described before, which includes the stakes, blocking, and so forth. It continues:

Such transportation upon reasonable request therefor and to establish through routes and just and reasonable rates applicable thereto.

Then follows this, an absolute duty devolving upon the carrier:

It shall be the duty of every carrier subject to the provisions of this act to furnish such car stakes with cross strips, wires, or other material used to hold lumber and timber on flat and gondola cars.

And then follows the entire description so far as the word "transportation" is concerned. That, you will observe, is an absolute duty put upon the carrier to furnish these things; not that it is to furnish that which may be deemed by the Interstate Commerce Commission to be just and reasonable, but it is the absolute duty which Congress is to put upon the carrier.

And on the same page you will find:

And if such carrier or carriers neglect or refuse to furnish such car stakes with cross strips, etc.—

contained in the description, that they then become liable to criminal prosecution.

Now, if you will go over to another part of this bill, upon page 11, you will see that it reads as follows:

If the common carrier or carriers neglect or refuse to furnish any transportation instrumentalities—

and bear in mind that those transportation instrumentalities, as described in this bill, are—

transportation instrumentalities or facilities, including car stakes—

then going on with the same statement—

or other material used to hold lumber and timber on flat and gondola cars, etc.—

and—

neglect or refuse to furnish the services necessary in connection therewith, as specified in section 1 of this act as herein amended, and the shipper or shippers are required or compelled to furnish such instrumentalities and facilities and services, as specified in section 1 of this act as herein amended, etc.—

and if the carrier shall object to furnishing such transportation instrumentalities, facilities, and services as specified in section 1, then there shall be fixed a price or sum to be paid to the shipper or shippers, and the Interstate Commerce Commission shall direct its payment by order against the carrier or carriers, and shall enforce the payment thereof.

But see, in the first place, the agreement is to be made between the carrier and the shipper as to the amount that shall be allowed, and there is not in this bill, nor in the act to regulate commerce, and which this is an amendment to, a provision under which the agreement so made between the shipper and the carrier can be reviewed by anybody. If the carrier and the shipper do not agree, then the Interstate Commerce Commission can be appealed to, but if they do agree there is no authority to go anywhere else. Now, observe the effect. The interstate-commerce act, the Elkins Act, and the amendments of the interstate-commerce act were all with the purpose of shutting the door upon rebates and discriminations. It was a crying evil. It was found to be necessary that there should be vigorous legislation upon that subject, and every effort of Congress has been, during the past twenty years, and every effort of the Interstate Commerce Commission has been, since it was instituted, to shut the door. And yet here in this bill the door is open in shipments of lumber dealers that the shipper and the carrier may agree upon an amount of money to be paid for furnishing the stakes, because, as I will presently show you, it is not possible for the railroad companies to furnish them themselves.

With that brief statement with regard to the bill itself, let us see what was involved in this case before the Interstate Commerce Commission. Those petitions were filed in the three cases involving the wholesale lumber dealers of the entire United States. The primary idea that they had in mind—and I speak now from authority, from the petition which they filed—was that the regulation was unjust and unreasonable because they paid freight upon these stakes that they were furnishing for keeping the lumber and the various products on open cars; and it turned out, when the matter came up, that some roads in the country made an allowance of 500 pounds for the stakes; and when the roads came together before the Interstate Com-

merce Commission, with those petitions filed, they believed it was just on the part of the wholesale dealers, and they agreed that that allowance should be made, and that went into effect. You will find it in the opinion here, in the change in the rule which was made. That seemed to end the petition so far as it was a petition then, but they broadened that claim by amending the petition, and then charged that the regulation of the carriers of the shippers of lumber upon open cars, to furnish the stakes for the purpose of securing the lumber on the cars, was an unreasonable and an unjust regulation, and they asked the commission to make an order that the railroad companies should stake the cars; or if they did not, that an allowance should be made for the staking done by the shipper; and upon that an issue was joined by the railroad companies, and a vast amount of evidence was taken.

Witnesses from all parts of the United States—from the Pacific slope, from the Northwest and the West, from the Southwest and the South, from the central territory, and from the New England region—were called, all for the purpose of presenting to the commission as clearly as could be done the way in which the business was done, the origin of this practice of staking all cars by the shipper, in order that it might be determined by the commission whether the regulation of the carriers was a just or unjust regulation or was a reasonable or unreasonable one. That did not involve any question of power, because the power of the Interstate Commerce Commission to deal with that subject was not challenged at all. Later on, in the hearing, when they claimed that there was evidence which justified the commission in requiring the carriers to equip these cars with permanent stakes, suggestion was made as to the lack of power in the commission to make an order which would require that to be done. But that was the extent to which the power of the commission was challenged in those cases.

Now, the evidence was taken which covered those objects; it was finished in October, 1907; in January of 1908 the case was argued before the Interstate Commerce Commission; and in June, 1908, they handed down the decision which dismissed the petitions in all three cases.

The CHAIRMAN. What power of the commission did you say you challenged?

Mr. CARR. The power of the commission to make an order requiring the carriers to equip these cars with permanent stakes; that was it.

The CHAIRMAN. Is that done by regulation, on the part of the railroads?

Mr. CARR. That was a debatable question. I am only telling you of our attitude; I did not mean to say that we were right.

The CHAIRMAN. I wanted your attitude.

Mr. CARR. Yes; I did not mean to say that we were right.

The CHAIRMAN. I not arguing that; I am endeavoring to ascertain whether, in your opinion, the commission has no power.

Mr. CARR. I don't think we argued that proposition.

The CHAIRMAN. The power to do this, to do what they want done.

Mr. CARR. I do not question the power of the commission to do that.

The CHAIRMAN. To order permanent stakes?

Mr. CARR. But that is another proposition, and that is not what is involved here. This is only incidental, and I only speak of it in connection with what was said upon that. We challenged the power of the commission altogether in that case, and therefore they ought to come to you and have you amend the law.

The CHAIRMAN. Did you challenge the power of the commission to enter an order requiring the railroad companies to make a regulation or indulge in the practice of furnishing permanent car stakes?

Mr. CARR. I do not want to answer that question?

The CHAIRMAN. But I want you to answer the question.

Mr. CARR. I have grave doubts as to the power.

The CHAIRMAN. I am asking whether you challenge that power.

Mr. CARR. No, I do not; but I have grave doubts —

The CHAIRMAN. Did you challenge it before the commission?

Mr. CARR. We did not there.

The CHAIRMAN. I understood you to say that you did.

Mr. CARR. We did to a limited extent when the question first came up, and then we went in with the testimony and demonstrated the fact that permanent car stakes were not feasible.

The CHAIRMAN. I think it would be very interesting to know how far you did challenge the power of the commission.

Mr. CARR. You will not find anything in the opinion which shows that we did challenge the power of the commission; not a thing.

Now, on the direct proposition that is presented here, let me call your attention to what was said upon that subject in this opinion.

Mr. RICHARDSON. Before you pass to that, was not the opinion of the commission rendered upon the question, not that the commission did not have authority, but it was not just and fair to regulate that?

Mr. CARR. That is the ground that I am going to come to, but I want to call your attention to what they said upon the subject with regard to the permanent stakes.

The CHAIRMAN. It makes a great deal of difference to the committee and Congress whether you deny the power of the commission to do a certain thing or not.

Mr. CARR. I do not deny it.

The CHAIRMAN. They decided on the facts as presented that they ought not to do it, and I understood you to challenge their power.

Mr. CARR. We did challenge their power when the question was first raised, but afterwards the position was not carried out and we adjudicated it upon the facts.

The CHAIRMAN. You never abandoned that position?

Mr. CARR. I am abandoning it here. I do not mean to challenge the power of the commission to do it.

The CHAIRMAN. Do you think the commission has the power to require the railroad companies, either as a regulation or practice, to furnish permanent car stakes?

Mr. CARR. I think it presents a very great question.

The CHAIRMAN. I am asking you whether or not you think they have that power.

Mr. CARR. Apparently they have; apparently that is the trend of the decision.

The CHAIRMAN. But I think you ought to be perfectly frank with the committee; we would like to know the attitude of the railroads upon that question.

Mr. CARR. The attitude of the railroads is that the commission has power to deal with this entire subject, and did have, that was before them.

Mr. RICHARDSON. You understand that this bill that we have here is questioning the power of the commission; the authority. Isn't it merely asking it as a matter of right and justice to the lumbermen?

Mr. CARR. I understood the reason for the bill was that the Interstate Commerce Commission had decided that they did not have the power to do what these wholesale lumber dealers asked to be done in the case, and that therefore they wanted the law amended.

Mr. RICHARDSON. But that contention is not sustained in that decision of the Interstate Commerce Commission.

Mr. CARR. Certainly not; but I want to make it clear to the committee that the entire subject was investigated, and that the decision was upon the facts and not upon the lack of any power on the part of the commission to afford relief.

Now, this appears in the opinion [reads]:

Experiments were made by railroads in different parts of the country late in 1906 and in 1907 with patented steel stakes designed to be permanently attached to open cars for lumber shipment. A large number of such stakes were presented to a committee chosen for the purpose by carriers and lumber shippers, and two were selected to be put into service in order to test their efficiency.

I may say here that after the question came up, when the matter was in that form that they made the claim with regard to permanent stakes, that then they agreed that a committee should be appointed, one member of the committee being selected by the railroad companies, one selected by the lumber dealers, and the third one selected by those two, or in any way satisfactory to both interests, those three to go over the list of the patented stakes, and select one or two or possibly more that they thought might be practicable and feasible to make experiments with. That committee was appointed, and they selected two stakes, two patents.

The CHAIRMAN. Who composed that committee?

Mr. CARR. Mr. Bryan, representing the railroad companies—I can not give you the names of the other two, but there is no question but that they were men of experience. There were two committees, one in the East and one in the West, both selected in the same way, and for the purpose of making experiments in both parts of the country. They selected what was known as the Harvey stake and also a stake of the name of the patentee—I am not able to state it now. They were adjustable steel stakes, telescopic in character, and so arranged that they could be put down alongside of the car, and practical and feasible for the keeping of the lumber upon flat cars. They equipped cars with those stakes, sent them out to the service to be subjected to the vicissitudes to which car stakes in the transportation of lumber of that kind are subject to.

The CHAIRMAN. Who equipped them?

Mr. CARR. The railroad companies.

The CHAIRMAN. What railroad companies?

Mr. CARR. The Chicago, Burlington and Quincy, the Boston and Maine, the Atlantic Coast Line, the New York Central. I think there were some on the Rock Island, and various roads that reach the different parts of the country where lumber operations are carried on.

Mr. STAFFORD. How extensively were they equipped on those various lines?

Mr. CARR. I can not give you the numbers, some more and some less. I think on the Boston and Maine that 30 cars were equipped and sent out. On the Chicago, Burlington and Quincy a larger number, and on the New York Central a larger number. But enough were equipped so that the committee thought the results from them would demonstrate the practicability and feasibility of the stakes. That went over a period of months, and their reports were ultimately made of the information that they had obtained; and as might be expected, I suppose, under such circumstances, the member or members of the committee representing the Wholesale Lumber Dealers' Association said that these stakes worked all right, but those who represented the railroads and the others reported that they did not. Under certain conditions, in certain kinds of loading, they were successful. Under other conditions and with other kinds of loading they were not successful.

The CHAIRMAN. Were they all right so far as the loading of the lumber was concerned?

Mr. CARR. So far as the loading of the square-edged boards was concerned; yes. Wherever the square edge of the board or the timber was presented to a stake, they were fairly successful, excepting that it was found—and I think photographs will be exhibited to you here—that the movement of the cars, which is at times with a great deal of violence, would tend to shift the load; that is, if the car was struck heavily at the front, it would tend to shift the body of the load forward. And whenever that occurred the steel stake, with the lumber binding close against it, would be carried forward and bent, and when the load was taken off of course there was a bent stake to be dealt with. Bear in mind that these are telescopic stakes, and whenever there was a bent stake the telescopic part would not work.

Mr. STAFFORD. As I understand you, the stakes that were bent were merely at the ends of the cars, not on the sides?

Mr. CARR. No; on the sides. You can see that where the lumber was tied against these stakes, if the load was shot forward it would carry that stake along with it, because it would bind on the stake necessarily. With a wooden stake there was always enough elasticity in the timber so that when that was relieved it would spring back to its former position; but in the steel stake, no. That was one thing found with the square edge against the steel stake, with regard to logs and timber, that when they were loaded on the car and the pressure was downward, it was against the stake, and they would not operate in those cases with any degree of success at all. They were impracticable for any such purpose as that. You can readily see that a permanent stake put upon cars must be one that will meet all classes of traffic. There are gentlemen here who assisted in making those experiments and who have the information that was derived, and they will give that information to you after I have gotten through with this bill.

Now, the opinion reads:

These stakes are ingeniously arranged so that they can be lengthened or shortened as shipments require, and when not in use can be laid down at the sides of the cars. It also appears that at various times in years past railroads have tried other types of steel stakes. The cost of equipping cars with the per-

manent stakes put into experimental service on several roads varies, in the estimates given, from \$40 to \$60 per car. It is insisted by defendants that no permanent stake has yet been invented which is practically usable for the varied shipments made on open cars; that the same stake would not meet the needs of greatly varying kinds of lumber, including timber and logs; and that stakes suitable for holding lumber would be more or less in the way and liable to be broken or bent in loading other traffic. It is also claimed that the percentage of open cars used for lumber shipments is comparatively small—

And to that I will call your attention presently.

(Continues reading:)

That it is impracticable to set apart a portion of the open cars to be used for lumber traffic; and that to equip all open cars with permanent stakes, in order to provide for this commodity would therefore involve a disproportionate expense, besides lessening in some degree the usefulness of open cars for other traffic. It is further shown that 8 steel stakes would weigh from 750 to 1,200 pounds, and that the carriage of that additional dead weight upon open cars, whether used for lumber shipments or not, is an item to be considered in connection with their adoption as permanent car equipment. Evidence respecting the practical utility of permanent steel stakes of any kind, and particularly with respect to those tested in service, is in sharp conflict. It is earnestly maintained by defendants that these steel stakes proved valueless for shipments of lumber, and it is just as earnestly maintained by complainant that they were a complete success whenever they were subjected to proper tests, and that it is entirely feasible and practicable to apply steel stakes permanently to open cars for lumber shipments. The view we take of the matters in controversy obviates the necessity of a finding of facts in this regard even were it possible to determine the question on the evidence submitted.

So that you will see that they dealt with the question directly, and had not the slightest hesitation in the assertion of their power to do it, provided that these facts justified; but the facts did not do it. I must say, in connection with that, that during the progress of the hearing it was stated by the members of the commission, some of them at all events, that while it was true that a good deal of ingenuity had been exercised in the production of these stakes, and while they had valuable qualities, nevertheless they were in an experimental stage, and therefore it was a matter of subjecting the carrier corporations to a large additional expense of putting in these permanent stakes in order to demonstrate the value of an experiment. That was the situation so far as the permanent stakes were concerned.

Mr. ESCH. You have only described the results of using the telescopic stakes. We had pictures shown us yesterday of a stake made, I should judge, from angle iron—one single piece. Were any such placed upon cars for trial?

Mr. CARR. I will have these gentlemen who made these experiments state that, because I do not want to foreclose them and have you get a wrong impression as to what was done. I will say, however, that when these committees were organized they went over these patents and only found two which they thought at all promising, and they took the ones they thought did have the best qualities for the purpose of determining if they were practicable and feasible. I have no doubt but that they arrived at what was said to be a correct conclusion, because Mr. Harvey, who was the patentee of the stakes that they made use of for experiments, said on cross-examination that he had examined, I think, 160 patents for car stakes, but not one of them was at all practicable, in his judgment. But he then, with the ideas thus obtained, got up this stake, and when that was submitted to this committee I am speaking of they pointed out certain respects in which it was defective; he then pro-

ceeded to remove those defects, and his claim was that he had succeeded. I only mention that here so that you can see that whatever was done upon the subject was of an experimental character. He was not at all sure upon the subject, and you can understand why the evidence was of the character that was presented. After that evidence was put in there did not seem to be any particular reason for continuing it, although it covered several days; then it went upon the broad ground with regard to the temporary stakes that were furnished, and then this condition of things appeared: It appears in the record that a large part of the lumber—and when I speak of lumber I mean the various products; there is no use in saying lumber and timber and various other things, but I speak of lumber so as to cover the subject generally—that a large part of the lumber is carried in closed cars. And putting all the figures together, because it differed on different roads in different sections of the country, in some as high as 80 per cent of lumber in closed cars and 20 per cent in open, and in other sections 50 per cent in closed cars and 50 per cent in open cars; but all together the conclusion was reached that 60 per cent of the lumber of the United States was carried in box cars. And in addition to that another thing developed, namely, that of the remaining 40 per cent; a portion of it could be carried in box cars as well as in open cars; and, generally speaking, that was done largely because the shipper called for the open car rather than the box car. In many instances there was no designation, and the car was accepted and such car furnished as the carrier had at hand. But putting all those figures together, it was fair, from the testimony taken, to say that 15 per cent of that 40 per cent that was carried in open cars could have been carried in box cars if they had been ordered by the shipper or the carrier had furnished them.

Mr. RICHARDSON. Have you ever seen a type of a car with stakes and braces, and everything of that kind, adapted to all of the various kinds of shipments of lumber?

Mr. CARR. The car itself is adapted, but it is adapted to those shipments only by putting on stakes.

Mr. RICHARDSON. When you fix the car up and arrange it with braces and stakes, do you not get some shipments of lumber that can not be carried safely?

Mr. CARR. That is undoubtedly true.

Mr. RICHARDSON. Then can you fix one type of car that will answer all purposes?

Mr. CARR. That is not possible; there is no question about that.

Mr. RICHARDSON. That is, you can not get one type of car adapted to all conditions?

Mr. CARR. Certainly not. You will find in the opinion that with different kinds of lumber coming from the same quarter different kinds of cars were called for. It was not possible to have one car that was fitted to all kinds of traffic. You can see that there are some kinds of dressed lumber which necessarily must be carried in a box car, in order that it may be protected from the weather. Some of the timber is short, some of it is long, some of it is poles, some logs and cord wood, and all those things are to be carried which come under the general term of lumber or various products of lumber. The equipment has to be adapted to them, and it can only be

done so by making temporary changes in the equipment itself. No car is fitted for all.

Mr. TOWNSEND. Does the Master Car Builders' Association provide for shipments in all cases?

Mr. CARR. I suppose they try to do that, but whether they do or not I can not say; but they try to have the rules so that they will fit all cases.

Mr. TOWNSEND. If they can not do that, what is the use of the Master Car Builders' Association fixing rules?

Mr. CARR. Do you mean to say in regard to the carrying of lumber upon open cars?

Mr. TOWNSEND. Yes.

Mr. CARR. It is to secure uniformity, so far as possible, in the appliances that were put upon open cars for the transportation of lumber, so that it may be carried safely. Some reference was made here to some accident that occurred, which was undoubtedly true; and it was the general sentiment of the managers of railroads that there ought to be uniformity in that respect. The rules that were adopted by the master car builders represents the best judgment of the men engaged in operating railroads in the way of safety, including the putting of stakes upon open cars for the purpose of holding various products of lumber in course of transportation.

Mr. ESCH. To what extent are the recommendations of the Master Car Builders' Association, with reference to the staking of lumber, carried out by the various railroads?

Mr. CARR. Of course that is difficult to state. There may be cases where that is not done, but it is the purpose of the master car builders and of the railroad managers to hold to those rules so far as possible to do. There may be cases, I think, in the South; the evidence before the commission was that they were not living up strictly to the rules in the classification territory, which is the central part of the country. The evidence showed that the master car builders' rules were fairly well observed and enforced, however.

Mr. ESCH. Do carriers reject carload shipments coming from connecting carriers that do not come up to the standard of the Master Car Builders' Association?

Mr. CARR. They do; yes, sir.

Mr. ESCH. To what extent?

Mr. CARR. I can not give you that. There are some practical men here who can give you more information upon that subject than I can. I am not a railroad manager, but I am a lawyer, and I have a good deal of general knowledge of the subject. But the real practice is a thing upon which you may be able to floor me. I want to give you all the information I can, but I do not want to mislead you.

Mr. ESCH. Very well. We have other witnesses, and we will wait for them.

Mr. CARR. Now, the commission not only did what I have already stated, but the testimony took a wide range, and that was as to the origin of this system of staking of cars. It was perfectly apparent when it originated. It originated just as all practices originate, at the beginning of transportation. For more than fifty years, so far as the evidence disclosed before the commission, from the beginning of transportation of lumber on cars it had been the practice for the shipper to stake the car, and it was because of the developments and

the evidence that the Interstate Commerce Commission said that the staking of cars was a part of the loading of the car and not a part of the transportation. Now, you will see why. On the evidence that was presented there it appeared that there were upward of 21,000 sawmills in the United States, and they are scattered all over the country. Not many of them are directly open to the line of a railroad. Some of them are 1 mile, 2, 3, 4, 5, or 6 miles away, and some farther; so that the mills are reached by a spur from the railroad, if it is only a short distance, and by a railroad itself if it is a longer distance. And these mills are not all large, that are furnished a great number of cars for each day. There are many of them where there are only one and possibly two cars.

Now, here is a flat car upon which lumber is to be put, and from the beginning of the loading there must be a stake on one side of the car in order that the lumber or timber can be loaded against the stake. That is the beginning of the loading.

Mr. ESCHE. How do you differentiate that from the furnishing of slats for the doorways of the coal cars and coke cars and the furnishing of troughs in cattle cars and racks in other cars? Isn't that just as much a part of the loading of the car as the stakes of a lumber car?

Mr. CARR. No. Please wait a moment. Do not get ahead of me.

Mr. ESCHE. I do not want to interrupt your argument, of course.

Mr. TOWNSEND. But before you go on with that, can you use that car for loading lumber without the stakes?

Mr. CARR. You can not. I mean the flat car. I am speaking now of the flat car, pure and simple. You can not use it without the stake, and you can not begin to load the car until the stakes have been put on one side.

Now, I am starting with the proposition that the railroads are required to do the staking. What does that mean? It means that here at this sawmill, that may be 1, 2, 3, or 4 miles away, where they manufacture one or two carloads of timber in a day, that the railroad must have a man there when they begin to load flat cars to put the stakes on; and then he must be there when they have completed the loading in order to put the stakes on the other side and to put on the binder. It is perfectly apparent that that is not practicable or feasible. There are cases where they have a large number of cars, and it would not be so much of a hardship or burden for the railroad company to have a man or men to do that particular work at that time. But you must bear in mind that this is a big country, and you are to deal with all these companies, little and big, and whatever is done in the way of legislation, or whatever may be done in the way of decision by the Interstate Commerce Commission must be something that is suited and adapted to the entire situation and not to some particular phase of it.

Mr. SIMS. If those stakes are provided as contemplated, will they not be of such a character so that the shipper can adjust them and so that they will not require a special man of the railroad company?

Mr. CARR. I would not want to say. From what those gentlemen tell me here, I do not think the shipper or anybody else can be depended upon for that. They will furnish that information with regard to that. If they work, all right; it is very simple. But if they do not work, then there is the trouble.

Mr. KENNEDY. I presume in the hearing in this case there was evidence as to how this custom grew up?

Mr. CARR. Yes, sir.

Mr. KENNEDY. Here is a thought that I would like to direct you to. The custom, of course, would control or affect contracts in connection with shipping, and has not there been a great change in conditions since the beginning of that custom that would make the custom itself almost incompatible with existing conditions?

Mr. CARR. Now, I want to call your attention to what the Interstate Commerce Commission said upon that subject, and that appears on page 8. This is based upon the evidence in the case (reads):

Ever since the inception of railroad transportation shippers have, generally speaking, loaded, and their consignees have unloaded, carload freight.

And I may say here that that was proven beyond all question. And, if you will pardon me for referring to how this originated—it seems to fit here—I will say that everything was done by the shipper of the commodity at the beginning, and by the consignee at the end, and they did not have anything but flat cars in those days, so that if it was needful that the commodity should be protected from the weather, that protection was furnished by the shipper in the way of tarpaulins and things of that kind.

That was the crude beginning of what has grown into an enormous business. And the result was that later it was discovered that box cars, or closed cars, or house cars, which was the original name, I think, in parts of the South—where, I think, they call them “house cars” yet—but in their effort to protect these articles that would be otherwise injured by inclement weather, these cars being covered with a multiplicity of articles that rapidly grew, the box car resulted; and you must remember that up to that time there was no such thing as a freight house along the line of roads. The cars, whether closed or open, were put upon the tracks of the carrier, and the shipper brought his commodity there, loaded it on the car, or in the car, as the case might be, securing it so that it would go through safely. Then the carrier carried it to its journey’s end, and when the consignee had been notified that it was there, then it was the duty of the consignee to unload it. And that has practically continued all the way down. But later it was found that there was occasion for something beyond that, and then came the freight house. There was no obligation to furnish a freight warehouse at common law, but that came in as a necessity, and it crystallized into statutes in various States. But the freight house came in, and that was to take care of freight that was to be loaded in the cars. And there all the shipper had to do was to take his commodity to the freight warehouse, and when he had put it into the freight warehouse, then the property had come into the custody of the carrier, and from that time on the carrier was responsible for it. In those cases the carrier’s men loaded whatever there was into the box cars or the open cars, as they might be, and they went on their journey.

Mr. KENNEDY. Those customs, in all those regards, had to give way to changed conditions?

Mr. CARR. That is undoubtedly true.

Mr. KENNEDY. Are we not still in an evolutionary stage?

Mr. CARR. I think not, so far as this is concerned.

Mr. KENNEDY. In viewing this custom, ought we not to take note of the changed price of lumber and the fact that you now have to make uniform contracts with all shippers? Then you made any kind of an old contract, and with every shipper individually.

Mr. CARR. I am not going to overlook that feature; but I do not want to take up any more time than will be necessary to deal with this subject, for it is a very interesting subject.

Mr. RICHARDSON. As to the responsibility of the common carrier—

Mr. CARR. I am going to deal with that subject also.

Mr. RICHARDSON. Is not the common carrier responsible, however, for the freight deposited on its platforms?

Mr. CARR. For all package freight that goes through the warehouse.

Mr. RICHARDSON. Take a bale of cotton, for instance, and put it on a platform. The common carrier is responsible after it receives it.

Mr. CARR. Responsible when it comes into the custody of the carrier; but as to the property that was loaded upon the car by the shipper, until the load was completed and it was in condition to go, the responsibility of the carrier did not begin. When that car had reached its destination, and notice was given to the consignee, then the obligation of the carrier, after a reasonable time had elapsed for taking away of the commodity, ceased. There was an obligation, it is true, that is designated in the law as to warehousemen, but the liability of the company for the condition of the property, excepting for an act of God or a public enemy, began at the point I have indicated and ended at the other end of the journey. You can see what an onerous rule it would be to say that the carrier should become responsible in a rigorous way for the commodities in a car, or for its safety, in connection with things done before it can come into the custody of the carrier. Take what I have said here about putting the stakes on the car at a mill 1, 2, 3, or 4 miles away from the railroad, and sending a man there. It does not come into the custody of the carrier when they put the stakes on one side. It does not come into the custody of the carrier when they have the car half loaded, and not until the load has been completed and is in condition to go. See how it fits in? The carrier is responsible in that way for what? For its own neglect, for its failure to do what it ought to do in the transportation of the property. But when that rule is applied he has the right to say—and that has been recognized during the entire period of transportation—that he is not responsible for the failure of the shipper to do something about his property by which it can go safely.

Mr. RICHARDSON. You go on the principle of a bill of lading. A railroad is responsible for the bill of lading?

Mr. CARR. Yes.

Mr. KENNEDY. After it accepts the car, and it starts on its journey, it is responsible?

Mr. CARR. Yes.

Mr. KENNEDY. It developed here yesterday that occasionally when stakes had gotten out of kilter at a junction point and where work had to be done on that car to make it fit to carry the lumber on to its destination, bills would be sent with the freight to the shipper for that work.

Mr. CARR. That is true; that is undoubtedly true. And it is upon this identical theory that that thing was done to secure the lumber on the car furnished the shipper as a part of the loading, and it was the duty of the shipper to pay whatever might occur by way of defect in that, just as it would be the duty of the shipper to pay if the box that he had put his commodity in had proved to be unsuited, or had become broken or had failed, without any neglect on the part of the carrier.

Mr. KENNEDY. Do you think that is a tenable position for the railroad to take, that having accepted these improvements to their car, and accepted the freight, and it gets out of repair in transit and in a defective condition at a junction point, that then they can impose the burden on the shipper to again repair their car and make it traffic worthy?

Mr. CARR. You have stated a proposition that I do not concede. It is not the repair of their car, but the repair of the thing which the shipper of the commodity has put on the car to secure his load in transit. If he fails to do his duty properly, then he ought to make it good; but if the failure comes from any neglect or fault on the part of the carrier, no. If a shipper has put in rotten stakes, and they are not discovered until the car has gone some distance on the journey, and the result was that it was needful that a sound stake be put in, that would be a case where my contention is, and I think it is absolutely sound—certainly sound in accordance with the decision of the Interstate Commerce Commission—that it would be the duty of the shipper to make that good. Of course the carload of lumber could not be left there, the repair must be made, and the bill goes forward to be paid the same as the freight.

Mr. TOWNSEND. Then, if I understand you correctly, if there is any defect whatever in equipping these cars with the stakes, that is the fault of the shipper and not of the railroad company?

Mr. CARR. Any defect that could be discovered or guarded against by the exercise of reasonable care?

Mr. TOWNSEND. That is, any defect for which the railroad would be held liable in case it furnished the stakes itself?

Mr. CARR. I would not state it as broadly as that, because the obligation of the railroad company is far beyond that of ordinary care, reasonable care. It is for the shipper to exercise reasonable care, the care of the ordinary person. But when the car has come into the custody of the railroad company, then the absolute burden of the carrier attaches, and that would not be correct with regard to the shipper.

Mr. TOWNSEND. So that in case of a defect in the stakes which caused the slipping of a load, and which resulted in accident and injury—not to the shipper, but to a passenger, say—you do not contend but what the railroad company would be held liable?

Mr. CARR. Certainly not.

Mr. TOWNSEND. But if it resulted in injury to the shipment itself, then you contend that the shipper is responsible?

Mr. CARR. If the defect was one that ought to be discovered or guarded against by the exercise of reasonable care on the part of the shipper.

Mr. TOWNSEND. But you are shifting the burden from the railroad company.

Mr. CARR. To that limited extent, yes; but I do it upon the ground that it is a part of the loading of the car and not a part of the transportation.

Mr. TOWNSEND. That is one of the reasons why you are contending against this bill, that you do not want the railroad company held responsible for any injury which may result to the shipper?

Mr. CARR. That is not the reason at all. If that was the only thing about it, I doubt whether I should be here. The underlying purpose of this is very different from that.

Mr. RICHARDSON. You are contending against it because it is not right?

Mr. CARR. Surely. I am contending against it because it is not right. I am contending against it because the underlying purpose of this legislation, as with the case before the Interstate Commerce Commission, was to obtain from the Interstate Commerce Commission an allowance of \$3.50 or more to persons who shipped lumber on open cars, and the object here of this bill is to procure the same thing. That is the underlying purpose. And I am opposing it because I believe it is wrong.

Mr. SIMS. Suppose the shipper should use defective stakes of the kind that would authorize the railroad to reimburse itself for having supplied them. Suppose from those defective stakes that there is an injury to the property. Does the railroad hold the shipper liable for the resulting damage beyond the reimbursement for the stakes?

Mr. CARR. That is not done. It never has been done, and I do not care to discuss a mere illusionary idea. It never has been done.

Mr. TOWNSEND. But if your position is correct, you would have a right to recover for any loss?

Mr. CARR. Strictly speaking, that is true, but I do not care to go into that refinement of reasoning, because the entire practice of the country has been the other way. Nothing of that kind has ever been done, and I do not think we need to disturb ourselves greatly over the possibility.

Mr. SIMS. But if you have the legal right to do one thing, you do concede it to the other?

Mr. CARR. Yes; the one carries the other, that is true. But in actual practice that does not show. That shows the origin of this, and it has been continued down to the present time; but you will see from what I have said here that with the changing conditions, with the use of a greater number of box cars for the transportation of lumber, the staking of these cars has not increased with the increasing of lumber traffic.

Now, reference has been made to gondola cars, and they are put in the same class as the flat cars. Some inquiry was made here yesterday, and I speak of this now so that there will be no misapprehension with regard to it. What was said in the opinion of the Interstate Commerce Commission was that, assuming the average carload weighs 40,000 pounds, the total amount would require 6,800,000 cars for its movement. Bear in mind that 60 per cent of that, taking this evidence as a whole, is carried in box cars, so that that drops out. We did look up the number of flat and gondola cars in use in the United States, and the figures were one hundred and

fifty-six thousand and some hundreds of flat cars, pure and simple, and between seven and eight hundred thousand coal cars. You can readily see from that that if these cars are to be equipped with anything in the nature of stakes in order to provide for the lumber traffic all over the United States it would mean practically the fitting of that entire number of cars, because it never could be told when one might be called upon for lumber or for something else.

Mr. SIMS. Suppose all of these cars were equipped for stakes, would it be necessary to furnish stakes for all the cars for simultaneous use? Could you not use a less number of stakes?

Mr. CARR. That is not practicable, because you never can know when a car will be needed for lumber,

Mr. SIMS. Is it considered in practice that all such cars will be called for at one time?

Mr. CARR. Oh, no.

Mr. SIMS. Then it would not require as many stakes.

Mr. CARR. Possibly not. I am only speaking about the entire number.

Mr. RICHARDSON. You made an estimate of what it would cost the railroads of the country?

Mr. CARR. Yes, sir. What was stated in the opinion of the Interstate Commerce Commission was that it would cost from forty to sixty dollars a car to put these stakes on. Those are figures given, and their estimate was based upon those figures. You can multiply 900,000 by 60, or by 40, just as you like—if you are economical say 40, and if you are extravagant say 60—and then you get the result of the amount of money to be invested.

Mr. RICHARDSON. What do you make it?

Mr. CARR. If it is \$40, it would be \$36,000,000. and if it was \$60 it would be \$54,000,000.

Mr. SIMS. About what percentage are those total numbers of open and gondola cars actually used for lumber shipments; that is, where the lumber is put in open cars?

Mr. CARR. I can only get at that in the way of an estimate. If you take 40 per cent of 6,800,000 cars, you would have 2,700,000 carloads carried on open cars, and of that, as I said before, upon the evidence here, 15 per cent could be carried in box cars and not necessarily in open cars, and the remaining 25 per cent would necessarily require open cars. That would be about 1,700,000 carloads. In different localities the number of cars that are used for that purpose widely differ. There will be some roads where a half a dozen flat cars would not be used in the course of a year, while upon other roads they would amount up to hundreds and thousands.

Mr. SIMS. But practically it would not be necessary to equip them all?

Mr. CARR. I did not mean to contend that, but I furnished that information because that question was asked, and I didn't want the committee to have any misapprehension in regard to it. Whatever may be said in regard to it, it is perfectly apparent that it requires the expenditure of a large amount of money to put this equipment upon the cars. In view of the fact that that equipment is in an experimental stage, it would seem to me advisable to wait a little longer until those experiments have demonstrated beyond all

question that they will be a success, because it would be a grave mistake—

Mr. SIMS. But lumber shipments will grow less every year.

Mr. CARR. Yes; they will.

Mr. STAFFORD. Are the railroads still maintaining those experimental cars?

Mr. CARR. They took them off for various reasons. The stakes were not satisfactory. There were some other reasons. They were found to be dangerous, dangerous to the men employed on the train; dangerous to other trains, because if the stake was bent out, a steel stake, so that it was liable to come in contact with a train passing on another track, or if they were bent out so that they should reach the ground or the rail, then they were liable to derail the car. These stakes had wires across from the top of one to another, and it was found, in their experiments, that frequently those wires were not taken off. There were wires across the platform of the car, and they were liable to trip the train men as they ran over them in the darkness, which, of course, produced an unfailing source of danger. But in addition to that, another danger was experienced. The rigid stake that stands up, if put down, operates like a shear; that is, if a brakeman on a car inadvertently gets where any part of his person can be caught between it and the load, it will act like a pair of shears and may cut off his leg or his arm, or whatever might be exposed to it. Those were the things which were developed in the practical application of those stakes.

Mr. SIMS. Are wires inadvertently left on wooden stakes?

Mr. CARR. No; the wooden stakes are taken away, taken away from the cars; but while it is true that the wooden stakes have no value at the end, yet it was developed in the hearings before the Interstate Commerce Commission that in the city of Chicago, for instance, those stakes were made use of for stakes again in the movement of cars; made use of for various purposes. Some were furnished to dealers to be used in the making of boxes and crates for other articles; so that they had elements of value. But in many other places they turned out to be nothing but firewood; and then possibly in some instances there was nothing whatever of value in them. The wooden stake is taken away; it is not left on the car. It is gotten rid of.

But now we come to another proposition, although I am taking up more time than I intended to. It was suggested here yesterday that the same rate should be placed upon lumber on the open cars as in the box cars; that the open car is a very much greater revenue producer, because they can put more lumber or timber upon it. That is true. Nevertheless, the evidence before the commission, and the evidence will be if you institute an inquiry anywhere else, was that there is a difference in the cost of the loading of lumber or timber on the open car as compared with putting it into the box cars; and some of the witnesses were frank enough before the Interstate Commerce Commission to admit that the difference in that case of the loading and the unloading was equal to what it cost to put the stakes on the open car, and some were willing to admit that it was even more than that. So there is the evidence not only as to the loading but the unloading.

Mr. WASHBURN. Who loads the open car, the shipper?

Mr. CARR. The shipper; yes, sir. But I am speaking now of the fact that they say there should be a difference in the rate upon lumber carried on the open car from that carried in the box car because they furnish these stakes. What I am talking about now is the advantage which the shipper gets by having the open car, which, as I say, is equivalent to putting the stakes there.

Mr. STEVENS. You heard yesterday, did you not, that it is cheaper to unload box cars? Who generally unloads the car?

Mr. CARR. The consignee.

Mr. STEVENS. Is there any difference in the freight rate when the shipper unloads or the consignee unloads?

Mr. CARR. No, sir.

Mr. STEVENS. How does the shipper gain?

Mr. CARR. I did not say that the shipper gained. I am trying to demonstrate that the shipper does not lose. That is what I am trying to demonstrate.

Mr. STEVENS. But he does lose if he has to pay the expense of the stakes. He does not gain by unloading.

Mr. CARR. If you assume that the statement that was made is true, that it is cheaper to unload box cars than to unload flat cars, I will ask you gentlemen if you have ever seen these cars. It does not take a whole lot of real practical commonsense to comprehend that it is cheaper to put the lumber or timber on the open car, where there is not any roof in the way and no sides of the car in the way, than it is to put it in box cars, where there is a roof and where the sides are in the way. But it is true, as Mr. Babcock said here yesterday, that there are places where they had the yards fitted so that they could handle the boards or timber in putting them into and taking them out of box cars, and that it was no more expense than upon the flat cars. But that does not tell the whole story. You must bear in mind that those are in places where the lumber is loaded in the various parts of the country and taken out at other parts. All that has to be put together, and the result of the evidence was, as you will find in the opinion of the commission, that it was cheaper to load the lumber and take it off of a flat car than to load it into and to take it out of box cars, as a general proposition. You can find exceptions to that, of course, but I am talking of the general situation as it was developed and disclosed in the evidence presented there. That is one thing. Here is another. You must bear in mind that the value of the stake to the railroad company is in its use, and if the car takes a load in one direction and is hauled back empty, then the rate obtained for the transportation one way must cover the expense of the movement of the car back without any load. Now, as a matter of fact, the box cars are used to a very large extent in taking loads in both directions; that is, if the box car is loaded with lumber and taken to a point where the shipment ends, it will get a load for return. But the stories as to the flat cars widely differ. They get little in the way of return loads, so little as to be practically insignificant; and the result is, so far as reducing revenue is concerned, and that, I take it, is after all a standard by which we are to be largely governed, the box cars, because they get return loads, can take the lumber at a rate at which it could not carry it if they did not have the return load to help out the situation.

Mr. WASHBURN. May I interrupt to say that the testimony seemed to be that it was a matter of indifference usually to the lumber dealers whether they had box cars or flat cars, but merely a question of getting the car. If that be true, and it is more profitable for the railroads to use the box cars, why do not the railroads have more box cars and fewer flat cars?

Mr. CARR. They have been getting box cars about as fast as the manufacturers could turn them out. You must bear in mind that we have been dealing with a development of business which our comprehension of things in the past has not been quite equal to. There has been a shortage of box cars, undoubtedly.

Mr. WASHBURN. That will be supplied in time.

Mr. CARR. There is no question about that, because they are supplying them. They are having box cars manufactured, and they may be able to meet all of the demands made upon them.

Mr. SIMS. Provided business comes to a standstill.

Mr. STEVENS. Have you any figures showing the proportion of box cars to flat cars year by year, so that we may ascertain that proportion?

Mr. CARR. That may be obtained from the Interstate Commerce Commission. The increase in box cars has been beyond the increase of flat cars. There is no doubt about that, for the reason that the flat cars do not get the return loads. The testimony before the Interstate Commerce Commission as to the Northern Pacific Railway and the Great Northern Railway, was that upon the traffic coming into Chicago, the flat cars that came in there went back empty; that they would not get a load on one flat car in fifty; while the box cars that came in loaded with lumber would very largely get a return loading.

Mr. ADAMSON. If you were to undertake to equip the roads with gondola cars to meet the demands of lumber shippers, would it entail delay and interruption of business?

Mr. CARR. There is no doubt about that. It would entail a good deal of delay in connection with business, because you must bear in mind that we do not deal simply with the flat car, pure and simple. This reaches to the gondola cars which are used very largely in traffic.

Mr. ADAMSON. Would it be practicable for you to help the lumber men in the use of those stakes by allowing them to accumulate them and pile them up until you could get sufficient to haul back to the shipping point to be used again?

Mr. CARR. So far as that is concerned, my understanding of the rule is that it was intended to carry these stakes free of charge—that is, that they were not to pay any freight on them.

Mr. ADAMSON. I understand, after they were used. My question is, Would it be practicable for you to allow them to gather them up and pile them up, to get a carload, and then haul them back and let them use them again?

Mr. CARR. It would be practicable; yes, sir.

Mr. KNOWLAND. The evidence yesterday was that when once used they were in such a condition that they could not be used again.

Mr. CARR. I know there was testimony of that kind before the commission, and also testimony the other way. In some localities that would be the case, and in others it would not.

Mr. ADAMSON. If they cut them off instead of knocking them out, it would shorten them that much.

Mr. CARR. Take the Chicago market, where a large amount of lumber comes in from the Northwest. A great deal of lumber is shipped around Chicago, short shipments that are sent out, which are not necessarily the large loads that come into the city, though sometimes they may be, and those stakes are used—that was the testimony—for restaking cars for shipments of that kind. That is undoubtedly true. But you must bear in mind that in different localities in the country widely different situations exist as to the stakes. In some localities the material used is waste lumber, and the testimony showed that out in the Northwest what was used for stakes was lumber that would go to the slab pile, which was burned up to get it out of the way. Down in the South, in many parts, what was used was that of the slightest value; and they all agreed, as I remember the testimony, that where they got a log that was defective, so that it would not make marketable lumber, they cut that up into material used for the stakes.

Mr. STEVENS. On the other hand, you have testimony to the contrary?

Mr. CARR. Certainly. I am only telling this side. You heard the other side yesterday. I am not trying to tell about the other side now. I want you to understand, as a clean-cut question of fact, that this question went before the Interstate Commerce Commission on this complaint, and the Interstate Commerce Commission, after hearing all the evidence, which took, of course, considerable time, and after deliberating over it, all agreed as to one proposition, that the regulation was not unjust or unreasonable requiring shippers to furnish stakes. But Commissioner Clark dissented as to the small amount of lumber or timber or whatever you may call it that could be shipped in box cars, which was, in fact, shipped in open cars, because such cars were furnished—that is the only ground of dissent in the whole decision. As to the timber, that must necessarily go in the open car. As to that he does not dissent from the others, but agrees with them that when a man had a commodity that required a car of that kind it was apparently the duty of the shipper to furnish the stakes.

Mr. RICHARDSON. How long after the testimony was taken did this decision follow?

Mr. CARR. The first testimony was taken in December, 1906, I believe, and then again in the month of March, 1907, and in the month of October following 16 witnesses were heard in Washington, and the decision was rendered in June, 1908.

Mr. RICHARDSON. Two years, nearly?

Mr. CARR. Yes, sir.

Mr. RICHARDSON. Upon all of these great varieties of questions conflicting testimony and evidence were heard by that commission on all of the subjects?

Mr. CARR. Yes. You have the substance here of the opinion that they wrote. You will see when you read the opinion in the light of what I have said here that they recognized it purely and simply as a question for them to determine whether the regulation was reasonable and a just one. If they found it was, in view of the past history of transportation, and in view of the evidence that was pre-

sented, then they had no cause for complaint, and that is just exactly what they did find. There isn't anything which shows any change in the condition which tends to aid the wholesale lumber dealers in that direction now or since that time, so that we are dealing with the case that was presented to the tribunal which Congress provided in the act to regulate commerce. It was the one to which it was said these questions should be submitted; it was for them to hear the evidence and to look into all phases of the question, and for them to determine whether the regulation and practice was a reasonable one or not. If they found that it was reasonable, it was assumed then that the matter had been rightly decided as between the parties complaining and the carrier companies of the country.

Mr. ADAMSON. I want to ask you a question that possibly has been asked before, and if it has, and you have answered it, I will withdraw it. But did you people deny in that hearing, or did the commission deny, that under the present law the commission has jurisdiction to make this regulation?

Mr. CARR. They did not. On the other hand, they recognized the fact that they did have jurisdiction.

The CHAIRMAN. We went into that question.

Mr. CARR. That question was entirely eliminated. There was not any question in regard to it. It was recognized that it was for the commission to deal with this subject, and for them to say, from the evidence presented, whether that regulation or that practice was reasonable or unreasonable; and they were of the opinion that it was just and reasonable.

The CHAIRMAN. I might say, Mr. Adamson, that that question was not decided by the commission.

Mr. ADAMSON. What I meant was, it has been gone into in this hearing?

The CHAIRMAN. Yes.

Mr. CARR. Yes; before you came in the members of the committee were trying to get me into a corner on that subject, but we got along with it, and they got all the information I could give them.

Mr. STEVENS. I would like to know whether or not it is true that the rules of the Master Car Builders' Association have been changed since this decision of the Interstate Commerce Commission?

Mr. CARR. I think not, but these practical gentlemen can tell you about that.

Mr. STEVENS. Do you know whether or not that has been the case?

Mr. CARR. I don't understand that it is so, but if it should turn out that any change has been made—

SEVERAL GENTLEMEN. No.

Mr. CARR. I am told that there has been no change. You readily understand that I am not conversant with all the things in connection with the Master Car Builders' Association and the management of the roads, but I have some knowledge of this case.

Mr. STEVENS. You made the statement that conditions have not been changed at all. I wanted to know whether or not the statement was true that the rules have been changed since this opinion was rendered.

Mr. CARR. Now you have gotten a long ways away from what I was talking about, and that was the rate upon lumber upon the open car is to be considered in connection with that absence of use for

the return load, so that it would be unjust and unreasonable to discriminate if an attempt should be made to say that because lumber is shipped on an open car a different rate, a lower rate of freight, should be applied than where it is shipped on the box cars. Then you make a discrimination at once against the box cars, and for the interest of the shipper to have all the open cars that he can find in the country upon which he can load his lumber. A large amount of the 60 per cent that is taken in box cars could be loaded upon flat cars, so you would open the door at once, which tends to the prejudice of the railroads for the reasons that I have stated before, that the revenue derived by the car for the journey as a whole is less in reality than with the box cars.

Mr. PETERS. I understood you to say that the use of the box car was 60 per cent of the total use, the total shipments of lumber. I notice on page 9 of this opinion that is before us that it says:

The evidence shows that the empty-car movement of open cars to points of production of lumber is much greater than that of box cars, on some roads reaching 87 per cent and on most of the roads in the country more than 60 per cent.

Mr. CARR. That is the movement, the empty movement, the movement of the car after it has taken its load of lumber. I called attention to that because I went through these figures myself.

The CHAIRMAN. You will find, Mr. Peters, on page 3 of the report a statement of the commission that—

in the country at large it is estimated that about 60 per cent of lumber shipments is made in box cars.

Mr. CARR. I had already stated that to the members of the committee, and I verified it.

Now, I call the attention of the committee to this fact: You are here discharging your duty to the best of your ability, and you are called upon to pass upon this question, which is in reality an appeal from the Interstate Commerce Commission to you; in other words, they say the Interstate Commerce Commission has rendered a decision that was wrong on the facts, and they come to you to rectify that wrong by amending the law in the respect which is stated here. And it is expected that you, in the brief time that this hearing takes place, in the brief time that you can give to the consideration of the case, can have a better knowledge of the entire situation governing the United States than the Interstate Commerce Commission got from its two years or two years and a half of study of the question. It does seem to me that the mere statement of the proposition is sufficient to demonstrate that this is not the place where this matter should be tried out. But if the Interstate Commerce Commission made a mistake, and if evidence of a different character can be presented now than was presented before, there is the tribunal which Congress has provided, and which has been in existence for more than twenty years, to deal with these questions; it is familiar with them, they have the knowledge of the case as it was heard before, and they are the ones who can rectify the wrong if there was any wrong.

The CHAIRMAN. In that connection, if there is a doubt—as there seems to be—as to the authority of the commission; if it should change its views upon the facts and require these cars to be staked;

if there be doubt about their authority, do you question that we ought to give them that authority?

Mr. CARR. I haven't any such doubt as would justify me in saying to the committee that I think it would be proper at all.

The CHAIRMAN. You have not admitted that they have that authority, and you denied it in your brief.

Mr. CARR. In a limited way; yes. But, Mr. Chairman, let me call your attention to this—

Mr. ADAMSON. I was trying to learn whether he admitted the commission had authority or not.

Mr. CARR. Pardon me if I make one suggestion. Some of the members of this commission, I have no doubt, are lawyers. If they are, they know that when lawyers are employed in a case they present all of the reasons that they think apply to the case, and it is not needful—it has not been my experience in my practice—that the lawyer should be charged with being wrong if he does not absolutely guarantee his utmost faith in everything that he says in his brief.

Mr. STEVENS. You admit that the law ought to be so plain that the commission ought to have that authority, that you would not even question it?

Mr. CARR. I have no doubt but that the commission has that authority.

Mr. ADAMSON. Do you think it is necessary to change the law in order that they may do that if they want to?

Mr. CARR. Certainly not. I do not think there is the slightest occasion to change the law. If it is to have them deal with the question, there is not any occasion to change the law, but to go to that tribunal again.

Mr. RICHARDSON. If I understand you about the commission, you do not think it is objectionable that this committee should go back and look into the fact that this Interstate Commerce Commission examined for two years upon this question and had these proofs before them. Do you think it reasonable for this committee to go back and look at that fact?

Mr. CARR. I think that the gentlemen of this committee ought to recognize what I judge we all ought to recognize, that some things have been rightly done in the past, and in the absence of something which shows that there has been a grave mistake, it is well to recognize that fact, and to say that the decision rendered under such circumstances is one that need not be disturbed by any action of this committee.

Mr. RICHARDSON. I didn't understand you to say that there was any suggestion on your part that this committee did not have the right to go along and make a change.

Mr. CARR. Certainly; I appreciate the fact that Congress created the commission, and that it has the right to deal with the interstate-commerce law in all respects, and has a right to deal with this question. I am only putting it to the members of the committee as a question of fairness and honesty in connection with the administration of the law. When you deal with it in that way and recognize the fact that it is needful that things do come to an end at some time, then it would seem, under the circumstances that have been disclosed here, that the committee ought to let that decision stand.

Mr. ADAMSON. For one, I thought that in passing this law we had conferred on the commission authority to determine these questions.

Mr. CARR. You had.

Mr. ADAMSON. And the purpose I had in asking my question was to know whether that was conceded or not.

Mr. CARR. It is conceded. Do not wander off upon that subject, and we will not have any debate upon that feature.

Mr. ADAMSON. If it is doubtful, we ought to amend it.

Mr. CARR. There is one thing more that I would like to call your attention to. The suggestion is made in making the allowance—I call your attention to the provision in the bill relative to the carrier and the shipper agreeing as to the amount. I think it will be demonstrated to the satisfaction of the members of this committee that it is not practicable nor feasible at the present time and in the present state of the art to apply any permanent stakes that have so far been invented. I think it will be apparent to the members of the committee that it is not feasible nor practicable for the railroad companies to do the actual staking, and therefore it has to be done by the shipper. An allowance to be made by the carrier to the shipper, as I pointed out at the beginning of my remarks, would open the door for discriminations and rebates that it was supposed had been entirely wiped out. In this evidence that was given before the Interstate Commerce Commission it was stated that in some localities the actual cost of the stakes was not to exceed 25 cents per car, while in other localities it amounted to as much as five and six dollars per car. It was different on different lines of road and in different parts of the country, so that it was impossible for the commission to arrive at any conclusion as to any amount that would apply generally over the country and be fair. But the complainant asked for \$3.50 a car, and you will find in the opinion of the commission that it was evident it was too much. In view of all the varieties of statements that were made, with reference to different parts of the country, it was not possible to come to a conclusion of what would be fair and right to apply generally throughout the United States.

Now, in what position is the matter? Is it that an allowance is to be made such as the shipper and the carrier can agree upon? Manifestly not.

Mr. ADAMSON. Let me ask you: Can not the local agent of the carrier where the car is loaded ascertain the cost of fixing that equipment and loading the car as easily as the shipper can?

Mr. CARR. No; you must take into account the various elements to be determined. The shipper is in the position where he can do it most economically; that is, he has the material at hand, and usually waste material. He is the man loading the car, so that the item of cost of labor in putting in the stakes and loading the car is the least.

Mr. ADAMSON. Would not the easiest place to adjust that be between him and the local agent of the road?

Mr. CARR. Possibly that is the easiest; but that don't go very far after that.

Mr. ADAMSON. That would settle each case?

Mr. CARR. Not necessarily. See what you open. Suppose you put it that way, that the local agent of the carrier and the shipper are to agree upon an amount that is to be paid—

Mr. ADAMSON. Not an amount that is to be paid, but what it does cost.

Mr. CARR. But that is a mere matter of convenience, as to the cost. You are dealing with the passage of a law by which an allowance is to be made to the shipper. That has to be ascertained in some way. It can not be left, as it is in this bill, to be agreed upon between the carrier and the shipper, because then you open the door to all sorts of discriminations and rebates.

Mr. ADAMSON. I am suggesting that you could get along better with the people by doing some things without a law.

Mr. CARR. I may agree with you about that. That is one reason why I don't think you need to add to this law now.

Mr. SIMS. If you should undertake to fix the value the shipper would be the owner of the stakes, and that would tend to open up an interminable amount of trouble.

Mr. CARR. That is absolutely true. You would never see the end of it.

Mr. TOWNSEND. I think it was the intention of the framers of the Hepburn bill to confer upon this commission the power, and full power, to determine this kind of a question. Now, in your brief you allege that the commission did not have the power; you say they had no right to do that. Will you be frank enough with this committee to tell us why you thought at that time they did not have that power?

Mr. CARR. I will tell you why: The matter with regard to powers of the commission has given rise to a vast amount of debate over the extent to which legislative power could be conferred upon the Interstate Commerce Commission or any other commission, and it has seemed to Mr. Mott, who was associated with me, and to myself, in that case, that when we came to the matter of permanent stakes upon cars we were getting close to the border line between regulations and legislation. We recognize the fact that the Interstate Commerce Commission could regulate to the fullest and broadest extent. We did not believe that Congress had given to the Interstate Commerce Commission the power to legislate and so delegated its own authority to legislate. It was right upon the border line. There had been a wide debate upon the subject. I said to the chairman, whatever Congress does upon the subject, I make no such question now. I concede it to be the fact that in the amended law you did make it broad enough so that the Interstate Commerce Commission could make an order of that kind, and that ought to be the situation.

Mr. STEVENS. Your proposition is that we have gone as far as we could under our constitutional authority?

Mr. CARR. Yes, sir. I am sorry that you suggested that question, because I did not intend to go into it at all. I did not want to raise any question of power. I want to deal with this case right upon the facts.

The CHAIRMAN. We are studying the general subject, and when we get a gentleman before us who has been giving consideration to it, we like to extract all the information we can.

Mr. CARR. If you have been able to extract any information from me I am very glad indeed. [Laughter.] I hope you will find when

you study the subject further that the information you have extracted from me is not of a misleading character, and that it will lead you to the right conclusion.

Mr. SIMS. Which is the more profitable per thousand feet to the railroad company, to ship lumber in box cars, discarding the idea of the return load, or in the open car for the same service at the same rates of freight; to use the box car or the open car, including the element of damage necessarily incident to the use of the car?

Mr. CARR. The use of the box car is cheaper.

Mr. SIMS. Do not box cars cost more than the open cars?

Mr. CARR. To a certain extent that is true.

Mr. SIMS. There is more capital invested?

Mr. CARR. Yes; but you eliminate another part of that problem. You ask me to answer about something that is not really practicable, for the reason that the box cars have value for the return loads, and you can not separate that from the value of the load of lumber alone.

Mr. SIMS. Is the incidental damage to the box car used in carrying lumber greater than the incidental damage in the use of the open car?

Mr. CARR. No; I think probably not, although there is a fractional damage possibly; but the cases are rare. But the use does not deteriorate the value of the box car any more than it deteriorates the value of the flat car.

* Mr. ADAMSON. I presume the discovery on your part of the wishes and disposition of the commission to make this requirement deprives your mind of a very unpleasant sensation?

Mr. CARR. I have no unpleasant sensation.

Mr. ADAMSON. Your mind could do anything but change without any difficulty?

Mr. CARR. Well, if we had unpleasant sensations every time our minds changed we would be having unpleasant sensations every day.

The CHAIRMAN. Have you other witnesses, Mr. Carr?

Mr. CARR. I beg pardon of the committee for taking so much time, but I have been greatly interested in the subject, and I wanted to give all the information at my command.

STATEMENT OF MR. EDGAR J. RICH, GENERAL SOLICITOR, BOSTON AND MAINE RAILWAY.

Mr. RICH. I was chairman of the council which had charge of this car-stake legislation before the commission. Our committee represented the Eastern States north of the Potomac and the Ohio rivers.

I had not intended to say anything to this committee, but there is one point which I would like to refer to, upon the question of power of the commission to deal with this subject. Upon that I believe that there is not the slightest doubt since a week ago last Monday, since the decision of the Supreme Court of the United States in the car distribution case. Some counsel had raised the question as to the powers of the commission to deal with regulations which did not directly affect roads, and in that case, which has not yet been published, I believe—

The CHAIRMAN. I have copies of the decisions, which may be put in the record.

(Following are the decisions referred to:)

[Supreme Court of the United States. No. 232, October term, 1909. The Interstate Commerce Commission, appellant, vs. the Chicago & Alton Railroad Company. Appeal from the circuit court of the United States for the northern district of Illinois. January 10, 1910.]

Mr. Justice White delivered the opinion of the court.

This case is controlled by the opinion just announced in the case of *Interstate Commerce Commission v. Illinois Central Railroad Company*. The complaints made to the commission were alike in both cases, and they were heard before that body at the same time, and one report was made in both cases. The order, in both cases, was the same. Like bills for injunction were filed in the court below, and there also they were heard together and were disposed of in one opinion. There is only this difference between the two cases. In this the bill for injunction contained the following averment concerning a small number, out of the thousands of coal cars forming part of the equipment of the road:

"That your orator has purchased and now operates on its line 360 steel hopper-bottom coal cars; that said cars are of an extreme height, to wit, ten feet; that, by reason of such height, said cars can be unloaded only upon specially constructed trestles; that no consignees to whom coal is shipped from mines on your orator's line own or have the use of such trestles, and that such cars are not available for commercial shipment of coal. And your orator avers that it at all times restricts these cars to the service of hauling your orator's own fuel supply, and that by reason of such restriction and by reason of the fact that your orator alone has the means of unloading said hopper-bottom cars, said cars never constitute a part of your orator's equipment available for commercial shipments of coal."

The answer of the commission denied all knowledge of the truth of the averments thus made, and called for proof on the subject. No proof was made, and the cause was submitted to the court below on bill and answer. In view of this fact, and in consideration moreover of the weight which the law gives to the finding of the commission, as to the existence of unlawful preference and the operative effect of the order which the commission made, until set aside, we think the mere averment of the facts referred to in no way causes this case to differ from the Illinois Central case. Of course, under these circumstances we intimate no opinion as to how far bad the facts alleged as to the hopper cars been established, they would to the extent of such cars have taken this case out of the rule announced in the Illinois Central case. It follows that the judgment must be reversed and the case remanded for further proceedings in conformity to this opinion.

Mr. Justice Brewer dissents.

[Supreme Court of the United States. No. 233, October term, 1909. The Interstate Commerce Commission, appellant, vs. The Illinois Central Railroad Company. Appeal from the circuit court of the United States for the northern district of Illinois. January 10, 1910.]

Mr. Justice White delivered the opinion of the court.

Whether a duty rested upon the Illinois Central Railroad Company to obey an order made by the Interstate Commerce Commission is the question here to be decided.

On the ground that preferences were created and discrimination engendered by regulations established by the railroad company concerning the daily distribution of coal cars to mines along its line in periods when the supply of such cars was inadequate to meet the demand upon it for the movement of coal, the order in question commanded the railroad company to desist from enforcing the regulations found to be preferential, and for a future period of two years to deliver cars to mines along its line in conformity with the rule announced by the commission.

A clearer perception of the questions to be considered will be afforded by giving a brief statement of the cause of car shortage referred to, accompanied with a mere outline of the steps generally taken by carriers to deal with the subject and the particular method applied by the Illinois Central Railroad Company prior to the date when the complaint was made against it, concerning which the order previously referred to was entered.

It is conceded in argument that bituminous coal mines, which are the character of mines here involved, must dispose of their product as soon as the coal is

delivered at the surface, as it is not practicable for an operator to store such coal, and the amount that a mine will produce is therefore directly dependent upon the quantity that can be taken away day by day. As a result of this situation it is also conceded that railroads upon whose lines coal mines are situated pursue a system by which daily deliveries of cars, based upon requisitions of the respective mines, are made to such mines to permit of the removal of their available output for that day.

Notwithstanding full performance by railway carriers of the duty to have a legally sufficient supply of coal cars, it is conceded that unforeseen periods arise when a shortage of such cars to meet the demand for the transportation of coal takes place, because, among other things, (a) of the wide fluctuation between the demands for the transportation of bituminous coal at different and uncertain periods; (b) the large number of loaded coal cars delivered by a carrier beyond its own line for transportation over other roads consequent upon the fact that the coal produced at a particular point is normally distributed for consumption over an extensive area; and (c) because the cars thus parted with are subject to longer detentions than usually obtain in the case of shipments of other articles, owing to the fact that bituminous coal is often shipped by mining operators to distant points to be sold after arrival, and is hence held at the terminal points awaiting sale, or because, owing to the cost of handling coal, and the difficulty of storing such coal, the car in which it is shipped is often used by the shipper or purchaser at the terminal points as a convenient means of storage or as an instrument for delivery, without the expense of breaking bulk, to other and distant points.

It is disclosed that the railroads of the United States generally, at various times, put in force regulations for the distribution of coal cars. Generally speaking, these regulations provide for fixing the capacity of coal mines in order to determine the number of cars to which each might normally be entitled to daily move its output of coal. And these regulations also provide for a method of determining the *pro rata* share of the cars daily allotted for distribution in times of car shortage. Neither the method by which capacity was to be ascertained nor the regulation for daily distribution upon the basis of such capacity in case of shortage were identical among the various railroad systems of the United States. The divergence, and even conflict, between those systems is illustrated by the cases of *Logan Coal Co. v. Pennsylvania R. R. Co.*, 154 Fed., 497; *United States ex rel. Pitcairn Coal Co. v. B. & O. R. R. Co.*, 165 Fed., 113; cases cited at pages 503 and 504 of the report of the Logan Coal Co. case, and the case of *Majestic Coal & Coke Co. v. Illinois Central R. R. Co.*, 162 Fed., 810.

In a general sense, however, all the regulations of the various railroads, either for ascertaining the capacity of coal mines or in order to determine the *pro rata* share for daily distribution of cars to the respective mines in case of shortage dealt with four classes of cars: 1, system cars—that is, cars owned by the carrier and in use for the transportation of coal; 2, company fuel cars—that is, cars belonging to the company and used by it when necessary for the movement of coal from the mines on its own line, and which coal had been bought by the carrier and was used solely for its own fuel purposes; 3, private cars—that is, cars either owned by coal-mining companies or shippers or consumers, and used for the benefit of their owners in conveying coal from the mines to designated points of delivery; 4, foreign railway fuel cars—that is, cars owned by other railroad companies and which were by them delivered to the carriers on whose lines mines were situated, for the purpose of enabling the cars to be loaded with coal and returned to the company by whom the cars had been furnished, the coal being intended for use as fuel by such foreign railroad companies.

The various regulations, irrespective of minor differences between them, fell upon one or the other side of this broad line of division. One system took into account class 2, the fuel cars of the carrier, class 3, the private cars, and class 4, the cars of foreign railroads, and deducted from the rated capacity of the mine the sum of coal delivered by that mine in such cars, and upon the basis thus resulting apportioned ratably in case of shortage the system cars—that is, those embraced in class 1. On the other hand, the other class of regulation not only took no account of the cars in classes 2, 3, and 4 as a means of rating the capacity of the mine, but, moreover, did not charge against any mine, for the purpose of ascertaining the daily *pro rata* of the cars to which such mine was entitled, any car whatever furnished such mine on such day embraced within classes 2, 3, and 4—that is, any company fuel car, foreign railway fuel car, or private car. By this system, therefore, where a mine was

entitled daily to a given *pro rata* of the cars subject to general distribution it received its full share of such cars, and in addition on that day also received such of the company fuel cars, foreign railway fuel cars, and private cars as might have been sent to it for loading on that day. This absolute disregard in the allotment of the company fuel cars, foreign railway fuel cars, and private cars was not in all respects common to all the systems which took no account of such cars in fixing capacity, since in some of the regulations one or the other of the classes was taken into account in fixing the *pro rata* for distribution.

Previous to 1907 the Railroad Commission of the State of Ohio filed with the Interstate Commerce Commission two complaints against the Hocking Valley and another railroad company. These complaints were based upon the ground that the failure of the railroads in times of car shortage to include in the *pro rata* of cars for distribution foreign railway fuel cars and private cars, and to charge the mines which had received such cars with the same as part of their distributive share, created an undue preference and worked unjust discrimination in violation of the act to regulate commerce. On July 11, 1907, the report and opinion of the commission was announced in the cases referred to. (12 I. C. C. Rep., 398.) It was declared that the complaints were well founded, and the relief prayed was awarded. Nine days afterwards—presumptively in ignorance of the finding of the commission just referred to—the Illinois Central Railroad Company promulgated rules governing the distribution of cars to coal mines. Although by these rules foreign fuel cars, private cars, and company fuel cars were not taken into account in ascertaining the capacity of a mine or mines, such cars were expressly directed not to be counted for the purpose of the daily distribution of cars among the respective mines. On August 15 following, however, presumably to cause the regulations to conform to the interpretation of the Interstate Commerce Act adopted by the commission in the Hocking Valley case, a circular was issued by the Illinois Central Railroad Company, to go into effect September 1, 1907, cancelling the circular of July 20, 1907, and directing that account should be taken in the distribution of cars to a particular mine or mines of both foreign railway fuel and private cars. Before the date fixed for the going into effect of this last-named circular the Majestic Coal and Coke Company, a West Virginia corporation, filed a suit against the Illinois Central Railroad Company in the United States Circuit Court for the Northern District of Illinois, complaining that to charge against its distributive share of coal cars, in the event of a car shortage, the fuel cars and private cars furnished it would violate its legal rights. After hearing, a temporary injunction, preventing the going into effect of the regulations in the particulars mentioned, was issued. The distribution of coal cars thereafter continued to be made as provided in the prior circular.

With this prelude we come more immediately to the origin of the controversy before us.

On October 31, 1907, the Illinois Collieries Company filed with the Interstate Commerce Commission a complaint against the Illinois Central Railroad Company. The regulations of the railroad company as to the distribution of coal cars were assailed as unjustly discriminatory in violation of the act to regulate commerce, particularly as respected the practice of not taking into consideration foreign railway fuel cars and private cars in determining the distribution of coal cars among the various coal operators along the lines of the railroad on interstate shipments of coal. It appears that the complaint just referred to was heard before the commission, with two other complaints against other railroads involving the same general subject. In its report, which was filed in all three of the cases on April 13, 1908 (13 I. C. C. Rep., 451), the commission held that not to count in times of car shortage when the daily distributions were made against the mine receiving the same company fuel cars, foreign railway fuel cars and private cars was a violation of the act to regulate commerce. In announcing this conclusion reference was made to the previous opinion of the commission in the Hocking Valley case, *supra*, and it was declared that the Illinois Central Railroad Company, on the hearing before the commission, had conceded the controlling effect of the previous ruling of the commission. Considering the temporary injunction issued by the circuit court of the United States for the Northern District of Illinois, the commission declared that, in view of the decision of this court in the case of the *Texas & Pacific Railroad Company v. Abilene Cotton Oil Co.*, 204 U. S., 426, it was the duty of the commission to order the carrier to desist from the unlawful discrimination.

Although the complaint in the case of the Illinois Central Railroad Company differed from the complaints in the two other cases which were considered and passed upon by the commission at the same time, in that it did not assail the failure to take into account the company fuel cars in making distribution in times of car shortage, nevertheless, the commission declared that the Illinois Central Railroad Company, both in its brief and argument, had conceded the importance of the subject to that company and had invoked the action of the commission thereon.

The order of the commission, as heretofore stated, therefore not only directed the desisting from the practice of failing to take into account the foreign railway fuel cars, private cars, and the company fuel cars, but also required the carriers to establish regulations for a period of two years from July 1, 1908, providing for the counting of all such cars. The general scope of the order was, however, qualified by expressly authorizing a railroad company to deliver to a particular mine all the foreign railway fuel cars, the private cars, and the company fuel cars consigned or assigned to said mine, even although the number thereof might exceed the *pro rata* share of the cars attributable to said mine when ascertained by taking into account all the cars which the order required to be considered. Where, however, the number of such cars was less than the *pro rata* share of the mine, the order only permitted the carrier to add a sufficient number of system cars to make up the rightful *pro rata* number.

Being unwilling to comply with the order of the commission, the Illinois Central Railroad Company commenced the suit which is now before us to enjoin in all respects the enforcement of the order of the commission. It was averred that although the company was adequately equipped with coal cars and with sufficient motive power and operative forces, yet at times an inadequate supply of coal cars to meet the demand arose from the circumstances which we have previously stated. It was alleged that the regulations adopted by the company for ascertaining the capacity of the mines and for the distribution of cars were in all respects just and reasonable, and it was charged that the order of the commission, directing the taking into account of private cars in the distribution of cars, was unjust, unreasonable, oppressive, and unlawful, because it deprived the owners of such cars of the right to the use of their own property. It was further alleged that, as to the foreign railway fuel cars, the order was also unjust, unreasonable, oppressive, and unlawful, because such cars constituted no part of the equipment of the road, and, failing to count them, could not constitute an unlawful discrimination or the giving of an unjust preference within the intendment of the act to regulate commerce. Besides charging that the order to count the company fuel cars was unjust, unreasonable, etc., it was averred that the attempt of the commission to deal with such cars was beyond its power, and was but an effort to deprive the company of its lawful right to freely contract for the purchase of the fuel necessary for the operation of its road. In addition, the proceedings in the suit brought by the Majestic Coal Company were set out, the granting of a temporary injunction therein as to counting foreign railway fuel cars and private cars was alleged, and it was charged that in any event, as to those two classes of cars, the order of the commission was not lawful, since it compelled the company to violate the injunction which was yet in force. The commission answered by asserting the validity in all respects of the order by it made, substantially upon the grounds which had been set out in its report and opinion announced when the order was made. All the averments in the complaint as to want of power were traversed and it was expressly charged that the subject of the distribution of coal cars as dealt with by the order was within the administrative power delegated to the commission by the terms of the act to regulate commerce. The nature and character of the preferences and discriminations which had led the commission to conclude that unlawful discrimination and unjust preference arose from the failure to count the classes of cars referred to was alleged in Subdivision XIV of the answer, a portion whereof is reproduced in the margin.^a

^a XIV. Defendant avers that the allotment by complainant of said foreign railway fuel cars, private cars, and complainant's fuel cars to the mines receiving them in addition to the full distributive shares of such mines in the general distribution of cars by complainant and the failure by complainant to count and charge said foreign railway fuel cars, private cars, and company cars against the mines receiving them, in said general distribution, results in undue and unreasonable preference or advantage to the mines and operators receiving such cars and subjects the owners and operators of mines which do not receive

A certificate as to the public importance of the cause was filed by the Attorney-General, in compliance with section 16 of the act of June 20, 1906 (34 Stat., 584), and the cause was thereafter submitted at the same time with one brought by the Alton Railroad, involving a similar question, to a circuit court held by Judges Grosscup, Baker, and Kohlsaat. A single opinion was announced in both cases. (— Fed. Rep., —.) While deciding that the complainants were not entitled to relief in so far as the order of the commission concerned the counting of foreign railway fuel cars and private cars, it was yet held that the railway companies were entitled to an injunction restraining the enforcement of the orders of the commission in so far as they directed the taking into account of the cars employed by the company in hauling its own fuel. The conclusion on this latter subject was based upon the theory that, as the railroad companies took the coal which they bought for their own use from the tipple of a coal mine, and thereafter moved it for their own account and not for commercial purposes, that the cars used for that purpose could not be treated as being engaged in commerce, as "commerce under these circumstances ends at the tipple." The court, however, observed:

"But this does not mean that these cars do not affect the problem of an equitable distribution of commercial equipment. The mine operators are objects of interest under the interstate commerce law, not as diggers of coal, but as shippers who tender a commercial product for transportation by interstate common carriers. The basis, therefore, on which the mines in a district should be rated is not their average output as a physical question, but the average output which they respectively tender for transportation in commerce."

And, in accord with this reasoning, it was in conclusion remarked that the complainants as to the cars used for hauling their fuel were entitled to an injunction "against their being compelled to take fuel cars into consideration except as a means in determining the true capacities of the mines to tender coal to them for transportation in commerce."

From the final decree enjoining the commission from enforcing its order, in so far as it directed the taking into account the company fuel cars in the distribution of coal cars in times of car shortage and in so far as it directed the future taking of such cars into account, the Interstate Commerce Commission appeals.

It is stated in the brief of counsel for the railroad company that, at the hearing below, despite the scope of the prayer of the bill, no question was raised by the railroad company as to the validity of the order of the commission to the extent that it controlled private cars and foreign railway fuel cars. Irre-

such cars to undue and unreasonable prejudice and disadvantage in the following respects, to wit:

(a) That the operator receiving the foreign railway fuel cars, private cars, or company fuel cars thereby receives a higher percentage of cars than mines of equal capacity which do not receive such cars.

(b) That the operator receiving the foreign railway fuel cars, private cars, or company fuel cars may operate his mines to a fuller capacity and thereby reduce the cost of coal per ton, resulting in an increased profit on his commercial coal.

(c) That the operator receiving foreign railway fuel cars, private cars, or company fuel cars is enabled to increase the number of working places in the mine, is enabled to develop his mine more rapidly, is enabled to increase his capacity rating, and in future reratings of such mine by complainant for the purposes of car distribution the mine would receive a higher rating and consequently a larger number of cars in complainants' general distribution of cars.

(d) That the operator receiving the foreign railway fuel cars, private cars, or company fuel cars is enabled thereby to secure and hold a larger, more efficient, and regular working force of miners and laborers.

(e) That the development of the mines which do not receive the foreign railway fuel cars, private cars, or company fuel cars is retarded in inverse ratio as the development of the mines receiving said cars is accelerated.

(f) That by the arbitrary allotment of the foreign railway fuel cars, private cars, or company fuel cars the complainant and the so-called foreign railways are enabled to secure low prices on railway fuel because the operator receiving such cars is enabled to produce his commercial coal at much lower prices than do the mines which do not receive such arbitrary cars.

(g) That the operator of the mine receiving the foreign railway fuel cars, private cars, or company fuel cars is thereby enabled to make contracts for the delivery of coal distributed over a long period, to an extent that the operator of the mines which do not receive such cars can not do.

spective, however, of this admission, as the Interstate Commerce Commission alone has appealed, the correctness of the conclusions of the court below on these subjects is not open to inquiry. And this also renders it unnecessary to consider in any respect the effect of the injunction, to which we have previously referred, as issued in the suit filed on behalf of the Majestic Coal Company, since such injunction only related to foreign railway fuel cars and private cars. Besides, it is stated in the brief of counsel that before the decision of this case the preliminary injunction in favor of the Majestic Coal Company was dissolved and no appeal was taken therefrom.

In consequence of one of the comprehensive amendments to the act to regulate commerce, adopted in 1906 (sec. 15, act June 19, 1906, 34 Stat., 589), it is now provided that "all orders of the commission, except orders for the payment of money, shall take effect within such reasonable time, not less than thirty days, and shall continue in force for such period of time not exceeding two years, as shall be prescribed in the order of the commission, unless the same shall be suspended or set aside by a court of competent jurisdiction." The statute endowing the commission with large administrative functions, and generally giving effect to its orders concerning complaints before it without exacting that they be previously submitted to judicial authority for sanction, it becomes necessary to determine the extent of the powers which courts may exert on the subject.

Beyond controversy, in determining whether an order of the commission shall be suspended or set aside, we must consider, *a*, all relevant questions of constitutional power or right; *b*, all pertinent questions as to whether the administrative order is within the scope of the delegated authority under which it purports to have been made; and, *c*, a proposition which we state independently, although in its essence it may be contained in the previous one, viz, whether, even although the order be in form within the delegated power, nevertheless it must be treated as not embraced therein, because the exertion of authority which is questioned has been manifested in such an unreasonable manner as to cause it, in truth, to be within the elementary rule that the substance, and not the shadow, determines the validity of the exercise of the power. *Postal Telegraph Company v. Adams* (155 U. S. 688, 698). Plain as it is that the powers just stated are of the essence of judicial authority, and which, therefore, may not be curtailed, and whose discharge may not be by us in a proper case avoided, it is equally plain that such perennial powers lend no support whatever to the proposition that we may, under the guise of exerting judicial power, usurp merely administrative functions by setting aside a lawful administrative order upon our conception as to whether the administrative power has been wisely exercised.

Power to make the order, and not the mere expediency or wisdom of having made it, is the question. While, as we have seen, the court below reasoned that the transportation of coal bought from a mine by the railroad company for its own use, after delivery to it in its coal cars at the tipple, was not commerce, because "commerce, under these circumstances, ends at the tipple," it yet reasoned that such coal was within the control of the interstate commerce law to the extent that a regulation compelling its consideration for the purpose of rating the capacity of a mine as a basis for fixing its *pro rata* share of cars in times of shortage would be valid. Because of this reasoning, it is insisted, it appears that the court below but substituted a regulation which it deemed wise for one which it considered the commission had inexpeditiously adopted, and this upon the assumption by the court that its authority was not limited to determining power. Without intimating an opinion as to the merits of the proposition, we put it aside as irrelevant, since we must decide whether the action of the court below was correct, irrespective of the reasoning by which such action was induced. We further also dismiss from view a contention, strenuously insisted upon in argument by the Government, to the effect that in determining the issue of power we must treat the railroad company as being at fault for the failure to daily deliver all the cars called for in times of car shortage. We put it aside because it is in direct conflict with facts expressly admitted or impliedly conceded in the answer of the Interstate Commerce Commission, and from which facts we must take it for granted that the equipment of coal cars of the railroad company was reasonably adequate to meet all normal conditions, although it became insufficient at times because of extraordinary circumstances, against which it was in reason impossible to provide.

We think the issues for decision will be best disposed of by at once considering the contentions advanced by the railroad company to establish that

there was a want of power in the commission to make that portion of the order which the court below enjoined. The contentions on this subject are stated in argument in many different forms, and if not in some respects contradictory are, at all events, confusing and often illusive, since, while seemingly addressed to power, they virtually intermingle power and expediency as if they were one and the same thing. We shall not, therefore, in making an analysis of the contentions, follow their mere form of statement, but shall treat them all as reducible to two propositions, *viz*: First. That the act to regulate commerce has not delegated to the commission authority to consider, where a complaint is made on such subject, the question of the distribution of company fuel cars in times of car shortage as a means of prohibiting unjust preference or undue discrimination. Second. That even if such power has been delegated to the commission by the act to regulate commerce, the order whose continued enforcement was enjoined by the court below was beyond the authority conferred by the statute.

As the Interstate Commerce Commission alone has appealed, it is patent that those portions of the order of the commission which concern foreign railway fuel cars and private cars, and which the court below refused to enjoin, are not open to inquiry. The suggestion at once presents itself whether, if these subjects are not open, they do not necessarily carry with them the question of company fuel cars, on the ground that the three classes rest upon one and the same consideration, and that to divorce them would bring about conditions of preference and discrimination which the act to regulate commerce expressly prohibits. In view, however, of the great importance of the questions directly arising for decision, and the fact that the court below has treated the company fuel cars as distinct, we shall not be sedulous to pursue the suggestion, and come at once to the propositions of power previously stated.

First. That the act to regulate commerce has not delegated to the commission authority to regulate the distribution of company fuel cars in times of car shortage as a means of prohibiting unjust preferences or undue discrimination.

When coal is received from the tipple of a coal mine into coal cars by a railway company, and the coal is intended for its own use and is transported by it, it is said there is no consignor, no consignee, and no freight to be paid, and therefore, although there may be transportation, there is no shipment, and hence no commerce. In changed form these propositions but embody the reasoning which led the court below to its conclusion that, under the circumstances, commerce ended at the tipple of the mine. The deduction from the proposition is, as the movement of coal under the conditions stated is not commerce, it is therefore not within the authority delegated to the commission by the act of Congress, as all such acts have relation to the regulation of commerce, and do not, therefore, embrace that which is not commerce. It is to be observed, in passing, that if the proposition be well founded it not only challenges the authority of the commission, but extends much further, and in effect denies the power of Congress to confer authority upon the commission over the subject. In all its aspects the proposition calls in question the construction given to the law by the commission in every case where the subject has been before it, and also assails the correctness of numerous decisions in the lower federal court, to which we have previously referred, where the subject, in various forms, was considered. It goes further than this, since it, in effect, seeks to avoid the fair inferences arising from the regulations adopted by the railroad company. Those regulations, in providing for the obligation of the railroad company to supply cars, and recognizing the duty of equality of treatment, found it necessary, by express provision, to provide that private cars, foreign railway cars, and company fuel cars should not be counted against the mine on the day when furnished, thus implying that, under the general rule of equality, if not restricted, it was considered the duty would exist to consider such cars. The contention, moreover, conflicts with the rule which, as we have seen, obtains in other and great systems of railroad, by which, for the purpose of avoiding inequality and preference, foreign railway fuel cars, private cars, and company fuel cars are made one of the factors upon which a mine is rated in order to fix the basis upon which its distributive share of cars is to be allotted in case of car shortage. And from this it must follow, if the proposition contended for be maintained, that it would not only relieve the railroad company whose rights are here involved from the obligation of taking into account its fuel cars in the making of the distribution, but from the duty even to consider them for the purpose of capacity rating. As a re-

sult, it would lead to the overthrow of the system of rating, prevailing on other railroads, by which, as we have said, such cars are taken into account, a consequence which is well illustrated by the case of *Logan Coal Co. v. Pennsylvania R. R. Co.* (154 Fed., 497).

Under these conditions, it is clear that doubt, if it exist, must be resolved against the soundness of the contentions relied on. But that rule of construction need not be invoked, as we think, when the erroneous assumption upon which the proposition must rest is considered, its unsoundness is readily demonstrable. That assumption is this, that commerce in the constitutional sense only embraces shipment in a technical sense, and does not, therefore, extend to carriers engaged in interstate commerce, certainly in so far as so engaged, and the instrumentalities by which such commerce is carried on, a doctrine the unsoundness of which has been apparent ever since the decision in *Gibbons v. Ogden*, and which has not since been open to question. It may not be doubted that the equipment of a railroad company engaged in interstate commerce, included in which are its coal cars, are instruments of such commerce. From this it necessarily follows that such cars are embraced within the governmental power of regulations which extends, in time of car shortage, to compelling a just and equal distribution and the prevention of an unjust and discriminatory one.

The corporation as a carrier engaged in interstate commerce being then, as to its interstate-commerce business, subject to the control exerted by the act to regulate commerce, and the instrumentalities employed for the purpose of such commerce being likewise so subject to control, we are brought to consider the remaining proposition, which is—

Second. That even if power has been delegated to the commission by the act to regulate commerce, the order whose continued enforcement was enjoined by the court below was beyond the authority delegated by the statute.

In view of the facts found by the commission as to preferences and discriminations resulting from the failure to count the company fuel cars in the daily distribution in times of car shortage, and in further view of the far-reaching preferences and discriminations alleged in the answer of the commission in this case, and which must be taken as true, as the cause was submitted on bill and answer, it is beyond controversy that the subject with which the order dealt was within the sweeping provisions of section 3 of the act to regulate commerce prohibiting preferences and discriminations. But it is contended that although this be the case, as the order of the commission not only forbade the preferences and discriminations complained of, but also commanded the establishment of a rule excluding such discriminations for a future definite period of not exceeding two years, the order transcended the authority conferred upon the commission. This proceeds upon the assumption that section 15 of the act to regulate commerce, as enacted by the act of June 29, 1906, while conferring upon the commission the authority, upon complaint duly made, to declare a rate or practice affecting rates illegal, and to establish a new and reasonable rule or practice affecting such rates for a term not exceeding two years, has no relation to complaints concerning preferences or discriminations, unless such practices, when complained of, are of a character to affect rates, which it is insisted is not here the case. The pertinent part of the section in question (15) reads as follows:

"That the commission is authorized and empowered, and it shall be its duty, whenever, after full hearing upon a complaint made as provided in section 13 of this act, or upon complaint of any common carrier, it shall be of the opinion that any of the rates, or charges whatsoever, demanded, charged, or collected by any common carrier or carriers subject to the provisions of this act for the transportation of persons or property as defined in the first section of this act, or that any regulations or practices whatsoever of such carrier or carriers affecting such rates, are unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial, or otherwise, in violation of any of the provisions of this act, to determine and prescribe what will be the just and reasonable rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged; and what regulation or practice in respect to such transportation is just, fair, and reasonable to be thereafter followed; and to make an order that the carrier shall cease and desist from such violation to the extent to which the commission find the same to exist, and shall not thereafter publish, demand, or collect any rate or charge

for such transportation in excess of the maximum rate or charge so prescribed, and shall conform to the regulation or practice so prescribed.

"All orders of the commission, except orders for the payment of money, shall take effect within such reasonable time, not less than thirty days, and shall continue in force for such period of time, not exceeding two years, as shall be prescribed in the order of the commission, unless the same shall be suspended or modified or set aside by the commission, or be suspended or set aside by a court of competent jurisdiction."

The contention gives to the words found in the earlier part of the section, "any regulation or practice whatsoever of such carrier or carriers affecting such rates," a dominant and controlling power, so as to cause them to limit every other provision in the section, however general in its language. We do not stop to critically examine the provision relied upon for the purpose of pointing out, as a matter of grammatical construction, the error of the contention, because we think, when the text of the section is taken into view and all its provisions are given their natural significance, it obviously appears that the construction relied upon is without foundation, and that to sustain it would be to frustrate the very purpose which it is clear, when the entire provision is considered, it was designed to accomplish, and thus would be destructive of the plain intent of Congress in enacting the provision. The antecedent construction which the Interstate Commission act had necessitated, and the remedial character of the amendments adopted in 1906, all serve to establish the want of merit in the contention relied upon. In addition, to adopt it would require us to hold that Congress, in enlarging the power of the commission over rates, had so drafted the amendment as to cripple and paralyze its power in correcting abuses as to preferences and discriminations, which, as this court has hitherto pointed out, it was the great and fundamental purpose of Congress to further.

Conceding, for the sake of argument, the existence of the preferences and discriminations charged, it is insisted, when the findings made by the commission are taken into view and the pleadings as an entirety are considered, it results that the discriminations and preferences arose from the fact that the railroad company chose to purchase its coal for its fuel supply from a particular mine or mines, and that, as it had a right to do so, it is impossible, without destroying freedom of contract, to predicate illegal preferences or wrongful discriminations from the fact of purchase. But the proposition overlooks the fact that the regulation addresses itself, not to the right to purchase, but to the duty to make equal distribution of cars. The right to buy is one thing and the power to use the equipment of the road for the purpose of moving the articles purchased in such a way as to discriminate or give preference are wholly distinct and different things. The insistence that the necessary effect of an order, compelling the counting of company fuel cars in fixing, in case of shortage, the share of cars a mine from which coal has been purchased will be entitled to, will be to bring about a discrimination against the mine from which the company buys its coal and a preference in favor of other mines, but inveighs against the expediency of the order. And this is true also of a statement in another form of the same proposition—that is, that if, when coal is bought from a mine by a railroad the road is compelled to count the cars in which the coal is moved in case of car shortage, a preference will result in favor of the mine selling coal and making delivery thereof at the tipple of the mine to a person who is able to consume it without the necessity of transporting it by rail. At best, these arguments but suggest the complexity of the subject, and the difficulty involved in making any order which may not be amenable to the criticism that it leads to or may beget some inequality. Indeed, the arguments just stated, and others of a like character which we do not deem it essential to specially refer to, but assail the wisdom of Congress in conferring upon the commission the power which has been lodged in that body to consider complaints as to violations of the statute and to correct them if found to exist, or attack as crude or inexpedient the action of the commission in performance of the administrative functions vested in it, and upon such assumption invoke the exercise of unwarranted judicial power to correct the assumed evils. It follows from what we have said that the court below erred in enjoining the order of the commission, in so far as it related to company fuel cars, and its decree is therefore reversed, and the case remanded for further proceedings in conformity with this opinion."

Mr. Justice Brewer dissents.

[Supreme Court of the United States. No. 289, October term, 1909. The Baltimore & Ohio Railroad Company et al., plaintiffs in error, vs. United States of America ex rel. Pitcairn Coal Company et al. In error to the United States circuit court of appeals for the fourth circuit. January 10, 1910.]

Mr. Justice White delivered the opinion of the court.

To decide the merits of this cause will require us to determine the legality of the regulations of the Baltimore and Ohio Railroad Company, by which that company distributed cars to coal mines along the line of its road in cases of car shortage. As an incident to this general question we would further be required to consider the relations, irrespective of its mere attributes and duties as a common carrier, of the Baltimore and Ohio Railroad with various coal mines along the line of its road and the relation with or control over some, if not all, of these coal mines by other mines or mine operators, and in addition to consider the relation of the Baltimore and Ohio Railroad with the Cumberland and Pennsylvania Railroad. This road taps the main track of the Baltimore and Ohio Railroad at Cumberland, Maryland, proceeds thence to the state line between Maryland and Pennsylvania, where it strikes the Pennsylvania Railroad, and passing thence through a country rich in bituminous coal deposits and containing coal mines, it reaches Piedmont, West Virginia, where its tracks again connect with those of the Baltimore and Ohio Railroad. As an additional incident we might also be required to consider the relation or control, direct or indirect, if any, which the Baltimore and Ohio Railroad exerted over some, if not all, of the coal mines along the line of the Cumberland and Pennsylvania road. Some, therefore, of the underlying questions involved in the cause, if we may consider them, are similar to the issues which were passed upon by us in the case of the *Interstate Commerce Commission v. Illinois Central Railroad*, which we have just decided. While referring to the general situation as depicted in that case, we think, in addition, a mere outline sketch of the conditions existing prior to the commencement of this suit, as regards the matters with which it is concerned, will serve to render clear the reasons which control us in deciding it.

The Baltimore and Ohio Railroad Company, a corporation existing under the laws of Maryland, owned and operated a railroad or railroads in the States of Maryland, West Virginia, Virginia, Pennsylvania, Ohio, and other States, and, as a common carrier, was engaged in interstate commerce between such States. The main line of said road west of Cumberland, Maryland, passes through a bituminous coal field, which is worked by many coal operators, the product of whose mines depend for their movement to market in interstate commerce on the facilities for such movement which the Baltimore and Ohio affords. For the purpose of this case, the coal mines referred to may be treated as situated in what is described as the "Monongah district" of the Baltimore and Ohio Railroad. Regulations of the Baltimore and Ohio Railroad, by which mines were rated in order to fix the basis for a *pro rata* distribution of coal cars in case of car shortage, had their peculiarities differing from other roads. They were based, first, upon the capacity of the mines; second, upon the previous shipments by the mines for a period of two years, the capacity counting as one and the previous shipments as two. The capacity was ascertained by considering the number of working places, etc., modified by taking into account the facilities for moving the coal out of the mine, such as tracks, tipple, etc. The previous shipments were taken from the records of the company during periods when there was no car shortage. Upon the basis of the capacity thus ascertained the regulations of the company for giving each mine owner in the case of shortage its percentage of cars, stated in the most summary way, were briefly these: In the first place, there was assigned, out of the general mass of cars before the distribution was made, such cars as it was deemed the Cumberland and Pennsylvania Railroad was entitled to. This was done by no fixed rule, but, in the discretion of the traffic manager, generally upon the basis of the percentage of shipments of coal hauled in the two previous years by that road. The estimated mass remaining after the deliveries to the Cumberland and Pennsylvania Railroad were subjected to certain arbitrary assignments, and the remainder, after such assignments had been taken out, were equally distributed among the mine operators, according to their capacity rating. The arbitrary deductions which were made, as we have just stated, were these:

1. Baltimore and Ohio Railroad cars placed at mines for Baltimore and Ohio fuel coal.

2. New mines are allotted an arbitrary number of cars daily or weekly for development. In cases where the inspection shows a marked increase in the

capacity of certain mines, and it is not practicable to change the percentage of the whole district, proper arbitrariness are applied pending a general revision.

3. Cars of foreign railroads assigned by them to their own fuel trade.

4. Cars of individual companies placed at mines owned by such companies and cars owned by individual consumers placed at mines for their coal.

There are also certain exceptions of a local character, as follows:

1. Curtis Bay premium. Whenever a shipper on the Baltimore and Ohio Railroad handles cars at Curtis Bay promptly in any one month, he is allowed in the succeeding month a premium of fifty per cent of the number of cars so handled, in addition to his regular percentage. This in lieu of an assignment of cars to the Curtis Bay trade.

2. At certain points, noted on the percentage sheets, an arbitrary number of cars is assigned to mines on fire.

3. At certain mines in the immediate vicinity of industries, empty cars intended for loading at such industries are first sent into the mines for loading coal for such industries.

4. When annual contracts are placed for foreign railroad fuel coal with mines on the Baltimore and Ohio, arrangements are made that if the foreign railroads' cars are furnished for this fuel coal, the Baltimore and Ohio will allow the mines shipping the coal a number of Baltimore and Ohio cars equal to the foreign cars furnished.

5. When mines are connected with foreign railroads, as well as with the Baltimore and Ohio, their rating is reduced fifty per cent. A similar reduction is made in cases where mines are located near rivers and are equipped for loading boats.

Where mines needed box and stock cars for the shipment of coal, as to which class of cars shortage rarely arose, there was a special rule which we need not notice.

With the system just referred to in force on the 19th of January, 1907, the Pitcairn Coal Company, a West Virginia corporation, owning a coal mine on the line of the Baltimore and Ohio Railroad in West Virginia, filed its petition in mandamus in the United States circuit court for the district of Maryland. The defendants were the Baltimore and Ohio Railroad Company, the Fairmont Coal Company, the Clarksburg Fuel Company, the Pittsburgh and Fairmont Fuel Company, and the Southern Coal and Transportation Company, these four coal companies operating coal mines located in West Virginia on the Monongah Division of the Baltimore and Ohio Railroad. Along with these there were also made defendants two other corporations, the Consolidation Coal Company, located on the Cumberland and Pennsylvania Railroad in Maryland, and the Somerset Coal Company, located on the Baltimore and Ohio Railroad in Pennsylvania. All of these coal companies were charged to be substantially one in interest and were generally described as the Fairmont companies. In addition, thirty-one other coal companies, alleged to be independent companies, operating coal mines on the line of the Baltimore and Ohio Railroad, were also made defendants. Rearranging somewhat the order of the averments as contained in the bill, the prayer for relief was substantially based upon the following grounds: The Pitcairn Coal Company, it was averred, was entitled to an equal distribution of the coal cars of the Baltimore and Ohio Railroad in times of shortage, in order to move its output of coal in interstate commerce, that the railroad company had refused, after demand, to give it the share of cars to which it was entitled, and that its not doing so had been seriously prejudicial to the business of the company, had curtailed its production and interfered with the moving of the coal produced in interstate commerce, and that the conduct of the railroad in the premises had amounted to the giving of an undue preference to the Fairmont Coal Company and its affiliated companies, to the prejudice of the Pitcairn company and all other independent companies. The method pursued by the Baltimore and Ohio Railroad for rating mines, by the consideration of both capacity and previous shipments, was alleged, and it was charged that, on the basis of capacity of the mine as rated by that system, the Pitcairn company was entitled to seven-tenths per cent of the cars for distribution in the Monongah Division. General averments were, however, made concerning the method of rating, which, in effect, charged that such method was discriminatory and preferential, and was put in force so as to operate in favor of the Fairmont Coal Company and the companies affiliated with it, to the prejudice of the Pitcairn company and other independent coal operators, the Baltimore and Ohio Railroad being interested, it was charged, directly or indirectly, in the Fairmont and its affiliated companies. The method of deduc-

tion from the mass of cars for the benefit of the Cumberland and Pennsylvania Railroad was also charged to be discriminatory and preferential, and to have been devised for the purpose of favoring mines on the line of the Cumberland and Pennsylvania which were affiliated with the Fairmont. The failure to charge against the mines which had received them individual or private cars, foreign railroad cars, and company fuel cars, as well as the other arbitrary allotments of cars provided for in the regulations to which we have referred, including the Curtis Bay regulation, were all assailed as preferential and discriminatory, it being alleged that in many instances the individual cars had been virtually paid for by the Baltimore and Ohio Railroad, and that the failure to charge them was in effect a mere means resorted to in order to give a preference contrary to the act to regulate commerce. The prayer was for an alternative writ of mandamus commanding an equal distribution in accordance with the averments of the petition in effect for the undoing of the regulations referred to and for the establishment of regulations conformable to the rights which the petition asserted. As the scope of the prayer is important in the view we take of the case, it is excerpted in the margin.^a

^a First. That in the event of scarcity of cars to be furnished by defendant, Baltimore and Ohio Railroad Company, to shippers of coal on the Monongah division of said road, that defendant, the Baltimore and Ohio Railroad Company, be required to furnish to relator one and seven-tenths (1.7) per cent until such percentage shall properly be increased, of the total number of cars in service, or supplied to all the shippers on the Monongah division of said road, without deducting from said number of cars "individual cars," or any arbitrary allotment of cars to other shippers, and without deducting from the total number of cars on all the lines of the Baltimore and Ohio Railroad the "individual cars" claimed by the Somerset Coal Company, or the cars arbitrarily assigned to the Cumberland and Pennsylvania Railroad Company, or the Consolidation Coal Company, before making the percentage distribution to the Monongah division.

Second. That writ of mandamus may be issued against the said Baltimore and Ohio Railroad Company, defendant, to command and require it to cease to make or give any undue or unreasonable preference or advantage to Fairmont Coal Company, Consolidation Coal Company, Cumberland and Pennsylvania Railroad Company, Somerset Coal Company, Southern Coal and Transportation Company, Clarksburg Fuel Company, or Pittsburg and Fairmont Fuel Company, or either of them, in the shipping and transportation of their coal, and to cease from subjecting the relator, Pitcairn Coal Company, or any other independent shipper of coal on the Monongah division aforesaid, to any undue or unreasonable prejudice or disadvantage in the shipping and transportation of coal, or in any respect whatsoever, and to move and transport the traffic of relator, Pitcairn Coal Company, and the other independent coal companies on the Monongah division aforesaid, without discrimination or preference, and to furnish the said Pitcairn Coal Company, and the other independent shippers of coal on the Monongah division, without preference or discrimination, and upon conditions as favorable to it or them as is given by the said railroad company to the said Fairmont Coal Company, Consolidation Coal Company, Somerset Coal Company, Clarksburg Fuel Company, Southern Coal and Transportation Company, and Pittsburg and Fairmont Fuel Company, or for like traffic, under similar conditions, to any other shipper, its fair and reasonable percentage of all cars on the line of said railroad and to shippers of like traffic along its railroad line, based upon the system of distribution of cars in effect on said railroad as aforesaid, or upon any fair, reasonable, and equitable basis, and to furnish to the said Pitcairn Coal Company, for the transportation of its coal, without discrimination, exception, or limitation, and upon conditions as favorable as those given to other shippers, the percentage of the total car supply on said railroad at this time properly distributable by said railroad company to the said Monongah division, and thereon distributed among the relator and the other shippers of coal thereon as aforesaid.

Third. That in ascertaining and fixing the number of cars to which relator, Pitcairn Coal Company, and the other coal companies on the Monongah division aforesaid are entitled, the said Baltimore and Ohio Railroad Company shall take into consideration and include in the estimate or calculation of the number of cars, to be divided in the proportion to which the percentages of each mine entitles the owner thereof to cars, all cars, whether owned by individual operators, shippers, other railroad companies, or by the Baltimore and Ohio Railroad

It suffices for the present purposes to say that the answer of the Baltimore and Ohio Railroad traversed every averment as to preference and discrimination, asserted the validity of the method of rating and the rules of distribution to which we have referred. In great detail the origin and history of the operation of private or individual cars was set out, various contracts on that subject were annexed to the bill, and a decree rendered by the circuit court of the United States for the northern district of West Virginia in favor of the Fairmont Coal Company, perpetually enjoining the Baltimore and Ohio Railroad Company to deliver certain private cars to the Fairmont Company, was referred to and made part of the bill. The Cumberland and Pennsylvania Railroad Company, the Fairmont Coal Company, and the five coal companies alleged in the bill to be affiliated with the Fairmont Coal Company applied for leave to answer on the ground that, although the alternative rule for mandamus had not been served upon them and they had only been summoned to "do whatever they deemed proper to protect their interest in the premises," they desired to answer, because the questions involved "are extremely important and of unusual interest, not only to your petitioners and the railroad against whom the mandamus is asked, but to the whole body of transportation companies engaged in interstate commerce, and that the importance of the questions involved is so great that your petitioners feel that they are making but a reasonable request when they ask for a reasonable time to thoroughly present the facts which the court ought to be in possession of for a full and complete determination of the question." The right to answer having been given, and delay for that purpose having been accorded, these companies answered. Without at all going into detail, we think it suffices to say that the answer traversed all the averments as to preference and discrimination alleged in the bill. It specially asserted the legality of the operation on the Baltimore and Ohio Railroad of private or individual cars; made copious reference to the acts or contracts from which the right to operate said cars had arisen; charged that to take said cars from the service of the persons who owned them would be confiscatory, and in substance asserted the validity of the system of rating and of distribution enforced by the regulations of the company which we have previously referred to. Fourteen out of the thirty-one corporations referred to in the petition as independent companies briefly answered, adopting the averments of the petition, and praying for the awarding of the relief therein asked. Sixteen did not answer, and one of said companies substantially joined in the defenses of the railroad company, except as to the individual cars, concerning which it averred that it was the duty of the railroad to purchase said cars from the persons owning them and to operate them as part of the railroad equipment. By stipulation the cause was heard by the court without a jury.

There was voluminous testimony and a protracted trial, each side requesting findings and instructions embodying their respective contentions and excepting in so far as they were overruled. The court considered all the contentions raised by the pleadings except several which were not pressed at bar. It held that in view of the relations which the Cumberland and Pennsylvania Railroad had to the Baltimore and Ohio and the origin of those relations the method by which coal cars were turned over to the Cumberland road was not preferential or discriminatory. It decided that however amenable, abstractly considered, to criticism, if at all, might be the system of rating, and especially the inclusion therein of the amount of coal shipments, and the large influence attributed to that fact, yet, when the particular facts concerning the Monongah district and the relations of the Baltimore and Ohio to that district were given their proper weight, the system was a just one and ought not to be interfered with. The complaint as to the Curtis Bay premium was also decided to be without merit; and so also was the complaint as to consumer's cars, as to foreign railway fuel cars and company fuel cars. Considering the private cars belonging to mine operators, and, without at all going into the relation of the Baltimore and Ohio Railroad with the owners of such cars, it was decided that while there was a right on the part of the railroad to move the cars, and it would be confiscation

Company, and which may be upon the road of said Baltimore and Ohio Railroad Company, and shall also take into consideration, and include in the estimate or calculation of the number of cars to be divided upon the percentages aforesaid, all cars, whether furnished or used by for fuel or supply coal for the Baltimore and Ohio Railroad Company, or for any other railroad company, and shall not deduct, before dividing the cars upon the percentages aforesaid, any cars for premiums at Curtis Bay, or other arbitrary allotments.

to deprive the owners of the right to use them, yet the duty was on the railroad to take account of the cars in fixing the percentage in case of shortage. The court declined to consider the decree which had been rendered in favor of the Fairmont company against the Baltimore and Ohio in the previous case, which was pleaded, as well as that in another cause which was relied upon in argument to the same effect as controlling. The mandamus prayed therefore was refused as to every item embraced in the petition but that particular item, and, as to it, the writ was awarded. (154 Fed., 108.)

The Baltimore and Ohio Railroad Company, the Fairmont companies, and the Pitcairn Coal Company prosecuted error. The circuit court of appeals held as follows: *a*, that the system of rating, so far as taking into view the shipments and percentages based thereon was considered, was discriminatory and preferential; *b*, that while the right to allot cars to the Cumberland and Pennsylvania Railroad under the facts found below was lawful, the methods by which the allotment was made was also discriminatory and preferential; *c*, that the practice as to the Curtis Bay regulation was also amenable to the same criticism; *d*, that the duty existed to take into account the individual cars, the foreign railway fuel cars, and the company fuel cars in making a *pro rata* division in case of car shortage, and that not to do so would give rise to undue preferences and unlawful discriminations forbidden by the act to regulate commerce. Concluding that the various subjects embraced in the complaint with which it thus dealt were all controlled by the act to regulate commerce, it was expressly decided that the right to rectify the wrongs by the issue of the writ of mandamus as prayed for was sanctioned by the twenty-third section of the act to regulate commerce, and the case was remanded to the court below, with directions to allow the writ of peremptory mandamus, in accordance with the opinion. (165 Fed., 113.) The case is here upon error prosecuted by the Baltimore and Ohio Railroad and the Fairmont coal companies.

One of the assignments of error assails the correctness of the conclusion of the court below to the effect that, compatibly with the act to regulate commerce, there was power under the circumstances disclosed by the record to consider the subject-matters which were complained of, and to award the relief concerning them which was prayed. Indeed, the nature of the controversy and the relief which it requires is such that, even without the assigned error, to which we have referred, the question at the very threshold necessarily arises and commands our attention as to whether there was power in the courts under the circumstances disclosed by the record to grant the relief prayed consistently with the provisions of the act to regulate commerce, and to that subject we therefore at once come.

To a consideration of this question it is essential to at once summarily and accurately fix the subject-matter of the alleged grievances and the precise character of the relief required in order to remedy the evils complained of upon the assumption of their existence. As to the first, it is patent that the grievances involve acts of the Baltimore and Ohio Railroad, regulations adopted by that company, and alleged dealings by the other corporations, all of which, it is asserted, concern interstate commerce, and all of which, it is alleged, are in direct violation of the duty imposed upon the railroad company by the provisions of the act to regulate commerce. As to the second, in view of the nature and character of the acts assailed, of the prayer for relief which we have previously excerpted, and of the relief which the court below directed to be awarded, it is equally clear that a prohibition, by way of mandamus, against the act is sought and an order, by way of mandamus, was invoked and was allowed, which must operate by judicial decree upon all the numerous parties and various interests as a rule or regulation as to the matters complained of for the conduct of interstate commerce in the future. When the situation is thus defined we see no escape from the conclusion that the grievances complained of were primarily within the administrative competency of the Interstate Commerce Commission, and not subject to be judicially enforced, at least until that body, clothed by the statute with authority on the subject, had been afforded by a complaint made to it the opportunity to exert its administrative functions.

The controversy is controlled by the considerations which governed the ruling made in *Texas & Pacific Railroad Company v. Abilene Cotton Oil Co.* (204 U. S., 426). In that case suit was brought in a court of the State of Texas to recover, because of an exaction by a carrier on an interstate shipment of an alleged unreasonable rate, although the rate charged was that stated in the schedules duly filed and published in accordance with the act to regulate com-

merce. After great consideration, it was held that the relief prayed was inconsistent with the act to regulate commerce, since by that act the rates as filed were controlling until they had been declared to be unreasonable by the Interstate Commerce Commission on a complaint made to that body. It was pointed out that any other view would give rise to inextricable confusion, would create unjust preferences and undue discriminations, would frustrate the purposes of the act, and, in effect, cause the act to destroy itself. The ruling there made dealt with the provisions of the act as they existed prior to the amendments adopted in 1906, and when those amendments are considered they render, if possible, more imperative the construction given to the act by that ruling, since by section 15, as enacted by the amendment of June 29, 1906, the commission is empowered, indeed it is made its duty, in disposing of a complaint, not only to determine the legality of the practice alleged to give rise to an unjust preference or undue discrimination, and to forbid the same, but, moreover, to direct the practice to be followed as to such subject for a future period, not exceeding two years, with power in the commission, if it finds reason to do so, to suspend, modify, or set aside the same, the order, however, to become operative without judicial action. In considering section 15 in the case of *Illinois Central Railroad Co. v. Interstate Commerce Commission*, just decided, it was pointed out that the effect of the section was to cause it to come to pass that courts, in determining whether an order of the commission should be suspended or enjoined, were without power to invade the administrative functions vested in the commission, and therefore could not set aside an order duly made on a mere exercise of judgment as to its wisdom or expediency. Under these circumstances it is apparent, as we have said, that these amendments add to the cogency of the reasoning which led to the conclusion in the Abilene case—that the primary interference of the courts with the administrative functions of the commission was wholly incompatible with the act to regulate commerce. This result is easily illustrated. A particular regulation of a carrier engaged in interstate commerce is assailed in the courts as unjustly preferential and discriminatory. Upon the facts found the complaint is declared to be well founded. The administrative powers of the commission are invoked concerning a regulation of like character upon a similar complaint. The commission finds, from the evidence before it, that the regulation is not unjustly discriminatory. Which would prevail? If both, then discrimination and preference would result from the very prevalence of the two methods of procedure. If, on the contrary, the commission was bound to follow the previous action of the courts, then it is apparent that its power to perform its administrative functions would be curtailed, if not destroyed. On the other hand, if the action of the commission was to prevail, then the function exercised by the court would not have been judicial in character, since its final conclusion would be susceptible of being set aside by the action of a mere administrative body. That these illustrations are not imaginary is established not only by this record, but by the record in the case of the *Illinois Central Railroad Company v. The Interstate Commerce Commission*.

We say this record, because, as has been pointed out, one of the questions which we would be called upon to decide if the merits were open is whether the court below was right in holding that if anything but the physical capacity of a mine was taken into consideration by a railroad company in rating the mine for car distribution in time of car shortage, the act to regulate commerce would be violated, and therefore the system adopted by the Baltimore and Ohio Railroad Company was repugnant to the act, because it made not alone the physical capacity but past shipments factors to be considered. But the reports of the Interstate Commerce Commission show that on a complaint made to that body on the subject of the system of mine rating of the Baltimore and Ohio Railroad Company, the commission, before the decision of the circuit court of appeals in this case was announced, had expressly refused to hold that the system was either preferential or prejudicial within the act to regulate commerce. In that report, speaking of the Baltimore and Ohio system of mine rating, it was said (14 I. C. C. Rep., p. 94):

"This method of rating mines was adopted by the defendant in 1902, after a careful examination of the various systems in force on other lines. It was intended as a compromise between ratings based on physical capacity only and ratings based on commercial capacity only."

And after elaborately weighing the matter, it was said (p. 95):

"In combining the two systems the defendant has adopted a middle ground, apparently upon the thought that neither the physical nor the commercial

capacity is always a fair test. We are not prepared, on this record, to say that there is no force in that view, and that a system of mine rating based upon a combination of the physical and commercial capacities of the several mines does not more closely approximate the actual car requirements of the mines than a system based upon physical capacity only."

We say also the Illinois Central case, since it is shown in that case that when the railroad company changed its regulations, presumably to have them conform to the administrative ruling made by the commission in the Hocking Valley case, such change was prevented from going into effect by an injunction issued by the circuit court of the United States for the northern district of Illinois in the Majestic Coal Company case. And when the commission came to discharge its duty upon the complaint made to it in the Illinois Central case it was put to the alternative of either abdicating its administrative duties or making an order in violation of the injunction.

And the destructive effect upon the system of regulation devised by the act to regulate commerce, which these illustrations show must be the result of construing that act as giving authority to the courts, without the preliminary action of the commission, to consider and pass upon the administrative questions which the statute has primarily confided to that body, may be greatly multiplied. This is shown by the opinion of the commission in the Baltimore and Ohio case, to which we have already referred, where the decisions of other lower courts are referred to in conflict with the opinion of the court below in this case as to mine rating, and not in harmony with the views expressed by the commission in the Baltimore and Ohio case.

The court below deemed that it was its duty to award to the coal company the relief by mandamus which was prayed, upon the theory that section 23 of the act to regulate commerce rendered it imperative to do so, this conclusion being specially based upon the provision of that section authorizing the remedy of mandamus to compel carriers "to furnish cars or other facilities for transportation for the party applying for the writ."

The section in question is as follows:

"Sec. 23. That the circuit and district courts of the United States shall have jurisdiction upon the relation of any person or persons, firm, or corporation alleging such violation by a common carrier of any of the provisions of the act of which this is a supplement, and all acts amendatory thereof, as prevents the relator from having interstate traffic moved by said common carrier at the same rates as are charged or upon terms or conditions as favorable as those given by said common carrier for like traffic, under similar conditions, to any other shipper, to issue a writ or writs of mandamus against said common carrier, commanding such common carrier to move and transport the traffic or to furnish cars or other facilities for transportation for the party applying for the writ: *Provided*, That if any question of fact as to the proper compensation to the common carrier for the service to be enforced by the writ is raised by the pleadings, the writ of peremptory mandamus may issue, notwithstanding such question of fact is undetermined, upon such terms as to security, payment of money into the court, or otherwise, as the court may think proper, pending the determination of the question of fact: *Provided*, That the remedy hereby given by writ of mandamus shall be cumulative, and shall not be held to exclude or interfere with other remedies provided by this act or the act to which it is a supplement."

That it is not necessary to point out that there is ample scope for giving effect to and applying the remedy embraced in section 23, if that section be construed in harmony with the act of which it forms a part, and not as destructive of one of the main purposes of the act, is, we think, obvious. It is to be observed that the section, besides empowering the use of the writ of mandamus to compel the furnishing of cars and other facilities for transportation, also authorizes the use of that writ for the purpose of compelling the movement of traffic "at the same rates as are charged or upon terms or conditions as favorable as those given by said common carrier for like traffic under similar conditions to any other shipper." As it was settled in the Abilene case that the right to question in the courts the rates established in accordance with the act to regulate commerce without previous resort, by complaint, to the commission, in order to determine their unreasonableness, would be destructive of the act, and therefore was not permissible, that ruling is equally applicable to the provision as to furnishing cars contained in section 23, which is here relied upon. But as we are required, for

the determination of the case now before us, to consider the scope of the act to regulate commerce as now existing, as a result of the amendments of 1906, we shall not rest our conclusion alone upon the persuasive force of the reasoning which constrained to the conclusion announced in the Abilene case. Speaking generally, it is true to say that prior to 1889, although the prohibitions of the act to regulate commerce as to preferences and discriminations were far-reaching, the mechanism provided by the statute for the enforcement of orders of the commission on the subject, as well as those concerning a finding as to unreasonable rates, were deemed to be in many respects ineffective, or at least tardy in operation or unsatisfactory in prompt remedial results, and this because immediate effect was not given to the orders of the commission, but the aid of judicial authority was required as a prerequisite for such result. Section 23, here relied upon, was not part of the original act, but, as we have said, was added thereto on March 2, 1889, for the obvious purpose of making the remedial processes of the act more speedy and efficacious. Now, it can not in reason be questioned that among the purposes contemplated by the amendments adopted in 1906 was the curing of the presumed remedial inefficiency of the act by supplying efficient means for giving effect to the orders of the commission, made in the exertion of the authority conferred upon that body. To that end one of the amendments, section 15, gives operative effect to the orders of the commission without the sanction of previous judicial authority, and endows that body with the power, not only as to unreasonable rates, but as to practices found upon complaint to be unduly prejudicial and unjustly discriminatory, to correct the same by its order, which order should have effect within the period fixed in the statute, and, to enforce these provisions, penalties and forfeitures are provided. (Sec. 16.) It being demonstrable, as we have seen, that to give to section 23 the broad meaning which the court below affixed to it would be to destroy or render ineffectual the remedial purposes of the amendments enacted in 1906, it must follow that such construction can not be adopted, since to do so would compel us to hold that the wide and far-reaching remedies created by the amendments of 1906 were, in effect, destroyed by the narrower remedial processes which had been previously enacted in 1889. This conclusion being in reason impossible, it must follow that, construing the provisions of section 23 in the light of and in harmony with the amendments adopted in 1906, the remedy afforded by that section, in the cases which it embraces, must be limited either to the performance of duties which are so plain and so independent of previous administrative action of the commission as not to require a prerequisite exertion of power by that body, or to compelling the performance of duties which plainly arise from the obligatory force which the statute attaches to orders of the commission, rendered within the lawful scope of its authority, until such orders are set aside by the commission or enjoined by the courts.

Nor is there anything in the contention that the decision in *Southern Ry. Co. v. Tift* (206 U. S., 428) qualifies the ruling in the Abilene case, and is an authority supporting the right to resort to the courts in advance of action by the commission for relief against unreasonable rates or unjust discriminatory practices, which, from their nature, primarily require action by the commission. While it is true that the original bill in the Tift case sought relief from alleged unreasonable rates before action by the commission, yet, as said by this court (p. 437) :

"The circuit court granted no relief prejudicial to appellants on the original bill. It sent the parties to the Interstate Commerce Commission, where, upon sufficient pleadings, identical with those before the court, and upon testimony adduced upon the issues made, the decision was adverse to the appellants. This action of the commission, with its findings and conclusions, was presented to the circuit court, and it was upon these, in effect, the decree of the court was rendered. There was no demurrer to that petition, and the testimony taken before the commission was stipulated into the case, and the opinion of the court recites that, with equal meritorious purpose, counsel for respective parties agreed that this would stand for and be the hearing for final decree in equity."

The judgment of the circuit court of appeals is reversed, and the cause is remanded to the circuit court with directions to set aside its judgment, and enter judgment dismissing the petition.

Reversed.

Mr. Justice Harlan and Mr. Justice Brewer dissent.

Mr. RICH. The Supreme Court held that the commission had power to make regulations, even though those regulations did not directly affect roads. I do not believe there is any counsel who has given any attention to this subject who hereafter will have the audacity to question the power of the commission to regulate this subject in its entirety.

There is just one other point that I want to refer to. In the first section of the interstate-commerce act, as it exists to-day, the railroads are obliged to furnish transportation facilities and instrumentalities of transportation upon reasonable request therefor. I do not believe that the act substantially changes the common law, but there it stands, and wherever the shipper desires the instrumentalities or the facilities of transportation, he can have them upon reasonable request therefor. And there is the test. What do these lumbermen ask? They ask that you will enact a law which will place the obligation absolutely upon the railroad of furnishing those instrumentalities which they want, and you take away from the commission the power to pass upon the question of reasonableness, and you say that they shall have these facilities whether the request is reasonable or not. Those are the only two points I wish to cover.

Mr. ADAMSON. Suppose the request took this form: You are requested to furnish me at a certain time or place either a box car for the transportation of a certain amount of lumber, or a flat car or a gondola car, properly equipped so that I can load it without additional expense to me. Wouldn't that be reasonable?

Mr. RICH. I have no doubt that that is a question which will be passed upon by the Interstate Commerce Commission. If they decide that such a request is reasonable, the railroads would meet it.

Mr. ADAMSON. But wouldn't that request be reasonable?

Mr. RICH. I think it unreasonable for two reasons, which I think will be brought out later, and which have been brought out by Mr. Carr. In taking into consideration a rate or regulation affecting a rate, there are two things to be taken into account—one the value of the service to the shipper and the other the cost of the service to the carrier. Those are the two principal elements in every rate-making proposition. Now, so far as the value of the service to the shipper is concerned, despite the evidence which was brought out yesterday, it is cheaper for the shipper to load the flat car than the box car. As Mr. Carr says, it simply means the application of common sense, without even experience, to show that it is easier and cheaper to place the boards on the flat car than in the box car. If I recollect right, in the testimony it developed that you could load three flat cars where you could load in the same time two box cars, and therefore the value of the service to the shipper is greater in the case of furnishing the flat car.

Mr. ADAMSON. You think that the time gained in loading the one would meet the difference in expense with respect to the other?

Mr. RICH. I think our evidence showed in a general way that it amounted to something like \$1.50 cheaper. So far as time is concerned in the loading of a flat car and a box car, that does not entirely take care of the balance of cost of the stakes themselves, in most instances. In many instances it is more than that.

The second element which enters into the rate-making proposition is the cost of service to the carrier. Mr. Carr has shown, and other

witnesses have shown, that the flat-car service is much more expensive to the carrier than the box-car service, because of the most important fact that return loads can not as a rule be secured in the case of flat cars.

I want to call your attention to one simple fact: Some years ago the Southern Railroad, recognizing the fact that they were using these flat cars in the lumber service and got no return load, and that it was very expensive service, made a rate of from 3 to 7 cents per 100 pounds higher when a flat car was used than when a box car was used.

Mr. STEVENS. Where was that?

Mr. RICH. In the southern territory.

Mr. STEVENS. How long did that rate remain in existence?

Mr. RICH. I don't know. I do not think that probably has been in effect for some fifteen years.

Mr. STEVENS. You don't know the result of that practice?

Mr. RICH. I could see at once that there would be serious trouble with the shippers.

Mr. ADAMSON. I suppose they would be justified on the theory that it was a special facility train.

Mr. ESCH. To what extent do common carriers use flat cars in carrying railroad material for the return loads?

Mr. RICH. I don't know, sir.

Mr. ESCH. Do you concede that they might use them to a considerable extent?

Mr. RICH. On return loads; yes, sir.

Mr. ESCH. If that is done of course that should be credited to the account, ought it not?

Mr. RICH. Exactly, sir.

Mr. ESCH. You have no data as to that?

Mr. RICH. That is a perfectly fair proposition, but I don't know the facts.

Mr. STAFFORD. The Boston and Maine Railway, with which you are connected, is a lumber-carrying road to a considerable extent, is it not?

Mr. RICH. Yes, sir.

Mr. STAFFORD. What is the practice of the Boston and Maine Railway as to the building of box cars as compared with the platform and gondola cars?

Mr. RICH. Box cars are increasing more rapidly than flat cars. I think that is generally true throughout the country.

Mr. STAFFORD. Are you continuing to build the platform or gondola cars to meet the demands of the lumber traffic, or are you abandoning them and substituting the box cars?

Mr. RICH. We built a few years ago a number of flat cars, and are using them in the general service so far as possible. But box cars, take it by and large, are more economical for the railroads. I would not want to give any definite figures, because I haven't them, as to the increase in the building of box cars or flat cars, but I think we could get that information later.

Mr. STAFFORD. What other character of traffic would you use the platform car for other than the transportation of lumber?

Mr. RICH. Of course the platform car can be used in the transportation of granite and stone, carriages and machinery, and things of that kind; but it is so seldom that the movement of a car makes

it possible to transport those things to lumber-producing points—for instance, in the New England country, and I think to a great extent in the South, these lumber mills are away from the large centers. They are up in the mountains in New Hampshire, up in those hills sometimes 10 miles from a town; and in Maine they are sometimes 50 miles from a town of any size. The result is that they haven't got anything to carry up there to put on a flat car. We can carry camp supplies, and horses and cattle, and those things in the box cars, which are required in the lumber camps.

Mr. RICHARDSON. Isn't it a fact that the railroads equip certain cars that can not be used for any other business excepting that particular business?

Mr. RICH. That is true.

Mr. RICHARDSON. In what respect do they do that?

Mr. RICH. To a very slight extent. They have cattle cars that are used for coke and coal and for coarse freight; that is, a class of car that you would think would be reserved for cattle.

Mr. RICHARDSON. Then the cattle interests are not as large as the lumber interests?

Mr. RICH. No, sir.

Mr. RICHARDSON. In what other instances are the railroads equipping cars particularly, besides the cattle cars?

Mr. RICH. I do not know of any.

Mr. RICHARDSON. Do they not do it in the coal regions?

Mr. RICH. The coal cars can be used for a great many other things. The Harper cars are used largely for coal.

Mr. RICHARDSON. Is the coal interest as great in this country as the lumber interest?

Mr. RICH. I should say, yes. I make this broad statement that if it is reasonable for the railroads to equip their cars, if it is a reasonable proposition, then they ought to do it. I will go further than that. I will say that a permanent stake can be devised which is reasonable and satisfactory, and which, to the judgment of fair men, is a fair proposition; and if it works well upon cars, that the railroads ought to equip cars with those permanent stakes, and that the lumbermen would be required only to pay whatever additional cost would be a fair cost and charge up to the more expensive equipment. In the long run it would not amount to anything. I am afraid that my associates do not always agree with me, because I have a great belief in the rights of the people and the rights of the shipper, and I have laid down that general proposition, that if you can devise a permanent stake which is satisfactory, that the railroads ought to put it on the cars, because that is more economical.

Mr. ADAMSON. You mean that your associates would not agree with you—that you feel that way and they that way?

The CHAIRMAN. The cases that you referred to in the Supreme Court were those decided on January 10, as follows: *The Interstate Commerce Commission v. The Chicago and Alton*, *The Interstate Commerce Commission v. The Illinois Central Railroad Company*, and *The Baltimore and Ohio Railroad Company v. The United States ex rel. Pitcairn Coal Company et al.*?

Mr. RICH. Yes, sir. That decision, it seems to me, goes further than almost any decision of the Supreme Court, as handed down with reference to the decisions of the Interstate Commerce Commission.

and its rights. It puts the power in the hands of the commission, where it ought to be. If there were any question in this case about the power of the commission to deal with this question I would say, Give them the power. I think the commission feels that there is no doubt about it after that decision of the Supreme Court.

Mr. STEVENS. In the language of Judge Knapp's opinion of the commission in deciding this case appears the following, speaking of the master car builders' rules, on page 3:

These rules, however, are directory rather than mandatory; and it appears from the evidence that they are not fully and strictly observed by any important railroad system except some of those operating in official classification territory.

I would like to know who is responsible for not observing the rules—the railroads or the shippers?

Mr. RICH. The responsibility can not be shirked by the railroads. They have it in their power to see that those rules are observed; and right on that question let me say that the rules are strict, and they ought to be strict. If you allow laxity in the operation of the staking of cars you make accidents inevitable. If there is any railroad in the country that is not enforcing those rules, then they ought to be enforced, and the railroad ought to be called to account for that laxity. But there are circumstances where it is perfectly proper that the rules should not be enforced, perhaps, in their entirety; for instance, you take a short movement of lumber on a single line where there are no bad curves or operating conditions which make it likely that the load will be moved or changed on the car, it would not be improper for the railroad to relax with respect to the rules to such an extent as to make that movement safe and perhaps easier for the shipper to comply with the regulations.

Mr. ESCH. There are no penalties agreed upon between the railroads in living up to the master car builders' rules and regulations?

Mr. RICH. I don't know about that.

Mr. ESCH. So it is a mere voluntary arrangement?

Mr. RICH. I think so; yes, sir.

Mr. STEVENS. Do you not think that we have authority to give the Interstate Commerce Commission power to enforce those rules in whole or in part, as may be necessary?

Mr. RICH. I think the commission has that power to-day, without the slightest doubt. If you will read the decision of the Supreme Court in that case, I think you will find that the language is broad enough to cover that.

Mr. BARTLETT. Ordinarily, railroads—I do not mean all of them—provide the instruments that will protect them from accident and injury and loss, do they not?

Mr. RICH. Yes; they try to, of course.

Mr. BARTLETT. It is their loss, and they are held strictly accountable by the courts and juries?

Mr. RICH. The loss, of course, is great in the case of accident.

(Recess at 12 o'clock noon until 2 p. m.)

AFTER RECESS.

The committee reassembled at the expiration of the recess, at 2 o'clock p. m., Hon James R. Mann in the chair.

The CHAIRMAN. You may proceed, gentlemen.

STATEMENT OF MORGAN J. BARNUM, GENERAL INSPECTOR OF MACHINERY AND EQUIPMENT, CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY.

Mr. BARNUM. Mr. Chairman and gentlemen of the committee, as we understand the requirements of this bill, there are two principal features: First, we are either to furnish the stakes, blocking, and so forth, for all loads on open cars and apply the same, or we are to pay the shipper for doing so.

We believe that the first proposition is impracticable, for many reasons, which I will itemize, but as the permanent stake has been brought so prominently into the evidence by the witnesses for the lumbermen, I would like to briefly review the tests made by the committee appointed by the General Managers' Association of Chicago, of which I was chairman, and the other two members are present to testify, if they so desire.

These stakes were tried and found impracticable, principally because they were dangerous and unsatisfactory to the railroads as well as the shippers. Mr. Harvey was employed by the lumbermen as mechanical engineer, and after examining the patent records, where he found about 160 kinds of patent car stakes, reported that not one of them was practical or feasible for use on freight cars, and proceeded to design a stake which he believed was practicable and overcame the objections which he found to each of these 160 stakes.

The CHAIRMAN. You say Mr. Harvey was employed by the lumbermen?

Mr. BARNUM. He was employed as mechanical engineer by the lumbermen. He represented them, and as their representative designed the Harvey stake.

The CHAIRMAN. Is that the same association whose officers appeared here?

Mr. BARNUM. The same gentlemen, as I understand it. They appeared before in this same case.

Mr. Harvey applied this stake to a single car and asked our committee to inspect it and approve or disapprove of it. We did so, and we were accompanied by the general managers of our respective roads. We found the stake as designed by him, and supposed to be perfect, contained several, I believe six, serious defects, one of which was that the stake was liable to drop down and catch platforms and other objects alongside the track; but after the conference Mr. Harvey said that he could overcome the defects of which our committee complained, and proceeded to do so. We then thought he had a stake which was worth trying, and looked as if it might be entirely satisfactory.

We proceeded then to apply this stake to 40 cars which were owned by 5 different roads running out of Chicago—the Great Northern, the Northern Pacific, Chicago, Milwaukee and St. Paul, the Northwestern, and the Chicago, Burlington and Quincy—the three latter roads being represented on the committee, and I, as chairman, also represented the Great Northern and Northern Pacific.

These cars were put into service, and we took special pains to run them light to get them to the lumber mills where they could be loaded for the purpose of examining whether they would meet the requirements. The Chicago, Burlington and Quincy cars were ready for

service on the 8th day of January, and the others very soon after, some little delay occurring on account of not receiving the stakes from the manufacturer; but they were all in service within a month or two and continued in service until after the hearing in November.

The most serious defect which this improved and perfected stake developed was that it was absolutely dangerous to trainmen and yard-men. The stakes in transit over the road became bent so badly that when they were loaded alongside of a flat car, in some cases they projected 26 inches from the side of the car, so that the cars standing side by side on the tracks with stakes bent had less than 19 inches clearance between them.

The CHAIRMAN. Will you describe those stakes to us?

Mr. BARNUM. I have some photographs here.

The CHAIRMAN. Describe them. We can not get photographs in the record.

Mr. BARNUM. I think, Mr. Chairman, if you would be willing to look at the photographs, they would help to make the description clear. I shall be pleased to describe them.

The CHAIRMAN. I can get a thing much better from description than I can from photographs.

Mr. BARNUM. These Harvey stakes consisted of I beams with malleable castings so attached to them that they would lock in a pocket that was designed especially for them—that is, attached either to the side of the sill of a flat car or to the side board of a gondola. There were two types of stakes, the gondola stake being higher on account of the character of the car, and that did not lie down alongside of the car, but dropped down inside of the side board, and where the side boards were low the floor was cut so that it would go through to drop down flush with the top of the car when out of service.

The flat-car stake was so arranged that when it unlocked it would lie down parallel with the side sills and below the surface of the floor of the car.

Both of these stakes had to have an extension on the top which was fastened by a rivet, but folded down when out of use, an extension so guided as to make the stake high enough to meet the requirements of a full load.

The CHAIRMAN. How much of an extension was it?

Mr. BARNUM. It was approximately 2 feet. I could not give you offhand the exact dimensions, but it was approximately 2 feet. It might have been 30 inches.

The CHAIRMAN. And how large was the stake in size?

Mr. BARNUM. My recollection is that Mr. Harvey used a 4-inch I beam—that is, 4 inches as I beams are measured, and what is considered a standard shape of I beams.

The CHAIRMAN. The same size all the way up?

Mr. BARNUM. Yes, sir; the same size all the way up, but the extensions were made of malleable iron and were tapered from the point of attachment to the main point of the stake up toward the top, and both the extension and the I-beam part of the stake were perforated to permit of putting wires through and securing a load.

The CHAIRMAN. I should think it would take a good deal of pressure to bend a 4-inch iron stake.

Mr. BARNUM. It did, undoubtedly, and the surprising part of the whole test was that the I beam, which Mr. Harvey, as an expert

mechanical engineer, which he is beyond question, had entirely underrated the strains to which these stakes are subjected by the vibrations and shifting of loads in going over the road.

Furthermore, none of us had anticipated one of the principal difficulties that developed—the fact that the stake, when bent, did not return. It lacked the elasticity of the wooden stake and took a permanent set, which left it in the shape illustrated in the photographs which have been submitted in a previous case.

That was one of the most serious faults, as I say, we had not anticipated.

I want to assure the committee here that our mechanical committee and our general managers' committee took hold of this case with entirely unprejudiced minds, and we did all we could from start to finish to perfect this thing, which was the best we had been able to find up to this time.

The CHAIRMAN. How did these stakes lock?

Mr. BARNUM. There was a dovetailing arrangement by which the malleable casting attached to the bottom of the stake locked into a socket in the malleable casting on the side of the sill. The gondola stake did not require that, because that was simply raised up and a pin put through to hold it up.

Mr. STAFFORD. Were both the characters of stakes the same in inefficiency, or did the gondola stake prove to have less objections?

Mr. BARNUM. The gondola stake developed less defects for the reason that there was less of it. There was less to the stake. It was simply a shorter stake, and the side of the car undoubtedly took part of the strain of the load, and the stake itself only took those parts of the strain which occurred above the sideboards; but they also bent in some instances, so that they could not be loaded as they were intended to be when taken out of service.

Another source of danger that developed with these stakes was the fact that when the consignees unloaded the lumber they cut the wires which were used on these stakes. A crosspiece of wood, of course, could not be nailed to an iron stake. So wire was the other alternative, which, if properly applied, is entirely satisfactory to the lumbermen and to the railroads, and is permitted by the rules. They would cut the wires at one end and leave them hanging to the other stake, and they either lay across the top of the flat car, as shown in some of the photographs there, or else in some instances they dragged alongside the car, and were in either case liable to trip up switchmen and trainmen in performing their duties.

The CHAIRMAN. Were not these stakes dropped down? Who would do that?

Mr. BARNUM. The consignee was supposed to do that, but as a matter of fact—

The CHAIRMAN. Would not that be the duty of the railroad company?

Mr. BARNUM. Yes; I think it would.

The CHAIRMAN. To have somebody in the yards to see that that was done?

Mr. BARNUM. Yes, sir.

The CHAIRMAN. And would it not be the duty of the same official to take care of the wire?

Mr. BARNUM. Yes; I think that would be properly a duty of the railroad company, but this was merely a thing that did develop in our test.

The CHAIRMAN. I understand.

Mr. BARNUM. Yes; I think it would be up to the railroad company to see that any defect of that sort was obviated and any danger of that sort was disposed of, done away with, before the car was allowed to go into service; but in that respect they were different from the wooden stakes, because there the wires go off with the stakes. The consignee keeps both.

We found, furthermore, these stakes were unsuited to many kinds of loads. You will see that in this set of pictures are cars equipped with those stakes, which are loaded with various products, that have been staked in addition with temporary stakes, and the permanent stakes ignored, because they did not meet the requirements. That was true of a number of different kinds of loads, particularly tan bark in short lengths of material, and short telephone poles.

Mr. STAFFORD. I notice from the photograph of the stakes attached to the gondola cars that they are very short. I wish to ask whether there were any experiments, substituting wood for the iron beam on those gondola cars?

Mr. BARNUM. There were no experiments with the wooden stakes, although there were several wooden stakes considered; but our committee took the position that no wooden stake was a permanent stake, for the reason that in our western country anything in the form of wood out on the prairies is at a premium and would be cut off for tent poles or tent pegs, fence posts, or things of that sort. For that reason we use flues for fence posts a great deal through the West, and we did not consider anything in the way of a wooden stake as a permanent attachment to the car.

Mr. STAFFORD. Removing that objection, is a wooden stake practicable on a gondola car for stake purposes?

Mr. BARNUM. No; we think not. The tests would indicate that many of the objections to the iron stakes would still hold with the wooden stakes. In the first place, it would not fit the different kinds of loads, even the kind of loads that the lumbermen furnish, and would be, as testified in our previous hearing, a possible obstruction to the retaining of some other kinds of loads.

Mr. STAFFORD. They would not if they were dropped in a similar arrangement as those iron beams were dropped on the gondola cars.

Mr. BARNUM. Yes; they would, for the reason that in order to apply those stakes we had to remove all of the temporary pockets, and in order to retain many kinds of loads the temporary pockets are absolutely necessary in order to locate the blocking or staking at the proper place on the car. The application of these stakes absolutely necessitated the removal of the pockets, which are ordinarily standards for the car.

Another objection to the permanent stake—this one or any other permanent stake—was that it reduces the usefulness and consequently the mileage of the open car, unless the stakes were applied to every car of that character. In that case, of course, they would all be equipped, and that objection would be done away with, but the lumbermen claimed it was not necessary to apply them to all the cars. That would of course mean that when they wanted a shipment that

required staking we would have to hunt up somewhere a car that had the stakes and send it there to wherever their shipment was to be put on.

The dead weight of these stakes varies from about 700 pounds, for a gondola, to about 1,000 or 1,200 pounds for a flat car, depending on the size and design of the car; and in the case of one other stake, a telescopic steel stake that we considered, it ran up to 1,600 pounds for a gondola. Of course that weight would have to be carried when the car ran light, or in any other way, and was an added source of expense to the railroad company. Ten hundred pounds of stakes would approximately cost the railroad company \$10 a year to haul it around, with a load or without a load.

These stakes cost—I do not know whether I mentioned that—\$35 approximately for a gondola and \$60, including labor and material, for the average flat car, applied, and the results obtained indicated that the ultimate life of the stakes would be not to exceed two or three years, on account of the distortion and breaking of the castings, even of the stakes themselves. Some of these stakes were turned off the cars entirely on account of being used with wrong loads, and lacking the flexibility of the sapling or the wooden stake, which is commonly applied to that kind of a load.

Mr. ESCHE. Is there not a considerable difficulty in unloading a carload of lumber from a car having these iron stakes, in view of the fact that to get the load off sidewise readily you have got to pull the stake down laterally to a horizontal position; otherwise you lift the material over the end of the stake?

Mr. BARNUM. That is a fact. That developed in our tests, but there are a number of those little things that I have not laid much stress on, because I have felt they were of minor importance.

But the lumbermen claimed that this stake could be raised and lowered with one hand, either put in service or removed from service, and we found cases where we had four men on a block and tackle trying to pull it down, trying to get the load off the car. They simply could not release the stake, could not get it down. In using this stake with telegraph poles, it was found to very greatly increase the expense for unloading, for the reason that the stakes could not be loaded in a convenient way, and the telegraph poles had to be rolled up over the tops of the stakes in order to get enough of them off to release the stakes on one side of the car.

It developed that these stakes were too short—and they were made as long as they could be, and pulled down alongside of the car—to load a 40-ton gondola to its maximum capacity, or a 40-ton flat car to its minimum capacity. That was something that the lumbermen complained of themselves after the stakes went into service out in the Northwest.

The application of these stakes to a flat car prevents the use on such a car, while the stakes are on it, of temporary sides for emergency loads of coal, gravel, and other commodities which railroads frequently find it desirable to put on flat cars by applying temporary sides, when the business is of such a character as to make that kind of car at a premium or in special demand.

Another defect that this stake developed was that in transportation over the road, moving the car over the road in trains, the stakes jumped out of the pockets and simply hung there by force of the

pressure of the load and the wire attached to the top across the top of the load to hold it up; but it did not have any effect in the way of preventing a longitudinal shifting of the load, or, of course, a side motion of the load.

That about covers the evidence I have in regard to the permanent stakes, unless you gentlemen would like to raise some further questions. I would simply add, however, that Mr. Burnham, the assistant to the vice-president of the Chicago, Burlington and Quincy road, was in this as a traffic expert, he being a specialist in that line, and he searched the records of the Great Northern, the Northern Pacific, and the Chicago, Burlington and Quincy roads for the fiscal year ending June 30, 1907, and found that the Chicago, Burlington and Quincy owned 14,914 open cars, and only 44 per cent of them got one load a year. In other words, 44 cars out of 100 got one load of forest products a year on the Chicago, Burlington and Quincy Railroad. The Northern Pacific road—

The CHAIRMAN. Let us understand what you mean by that.

Mr. BARNUM. Perhaps I can explain it without further questions. We own 14,914 open cars, and we handle 6,524 carloads of forest products in open cars.

The Northern Pacific is one of the heaviest lumber-carrying roads in the country, I believe. It is so considered, as I understand it. The records showed that they had about 12,937 flat cars, and those cars averaged about one load of lumber or forest products a year. So that the lumbermen are persistently demanding that these roads, which are, I believe, fair samples, shall equip their open cars with a stake costing from \$35 to \$60 a car and having a probable life of not to exceed three years, in order to carry one load at most a year.

Mr. ADAMSON. Your former proposition of 44 per cent gave each car a load in a little over two years?

Mr. BARNUM. Yes, sir; that is correct.

Mr. ADAMSON. It took them a little over two years to make a trip with a load of lumber.

Mr. KENNEDY. That evidence does not show, does it, how many of those loads of lumber were carried in house cars or box cars?

Mr. BARNUM. Yes, sir; it gives all the evidence. That is a digest of the evidence of the defendants in the case before the Interstate Commerce Commission, and if the gentlemen would like, we would be glad to leave this with you.

Mr. KENNEDY. So that the 44 per cent had reference to the cars that would need stakes, and no others?

Mr. BARNUM. Exactly. That is right.

I think it is pertinent to call attention right here to the fact that one of the lumbermen's witnesses himself admitted yesterday that in his experience with permanent car stakes on the Long Island Railroad some of them had done very well, but at other times they were a great nuisance.

We hold it is also impracticable for the railroads to supply wooden stakes. The places where the cars are loaded, at the twenty-one thousand and odd mills, as stated by the lumbermen, are many of them on spurs, on logging roads owned by the lumbermen, away from the railroads sometimes 10 or even 15 miles, and almost invariably, with the exception of a few large mills, away from stations and towns of

any size and from the points where railroads have employees who could be called upon for this work of applying the stakes.

Many of these mills ship very few cars, some of them, as the lumbermen themselves testify, not over 3 to 5 a day, and the staking requires from twenty minutes to an hour for two men, and ordinarily two men are required to stake a car. Furthermore, this staking must be done as the load progresses. That has been explained to you, I believe, that on a flat car and a gondola, ordinarily, the stakes are put up on one side of the car, the load is brought on from a platform or trestle on the other side, piled up against it; when the load is completed the stakes are put on on the side next to the platform, and the ties of whatever character are used, wire or boards, are fastened across the top and the loading is completed. So that it would be necessary for the railroads to maintain at every point where a load is put on an open car which requires anything to retain it other than the sides of a gondola men who ordinarily would be idle at least half their time, and in most of the cases three-quarters of their time.

Mr. SIMS. I would like to ask the gentleman a question right there: Would it not result, in practice, that the railroads would have to buy stakes from the mills doing the shipping?

Mr. BARNUM. It would. I was going to touch on that a little later.

Mr. SIMS. And at just such price as the mills would fix on them.

Mr. BARNUM. Exactly so.

Mr. SIMS. Having no competition?

Mr. BARNUM. Exactly. I expected to refer to that.

Mr. SIMS. It just occurred to my mind, and I wanted to ask the question.

Mr. BARNUM. That is the situation that it would resolve itself into.

Under the practice which has prevailed since cars were loaded with lumber, the men who load the cars do the staking, but the railroad employees could not do that because if the railroad company allowed their employees to help load these cars they would be discriminating against the men who had a load of grain or something else, which they do not help with and could not help with ordinarily—are not expected to.

The CHAIRMAN. That is an argument about the law. You had better confine your arguments to facts, because you are clear off on your law.

Mr. BARNUM. If that is so, then you may cross that out.

It is acknowledged, I think generally, that skilled men are obliged to do the staking and blocking of loads on open cars, men who are accustomed to doing it and know how they should be staked, for different loads require different kinds of securing. That is especially true with such articles as machinery and structural steel, which, I think, one of the other witnesses will go into more fully.

The CHAIRMAN. That is covered by the bill, although that portion of it has not yet been referred to by anyone in support of the bill, as I recall.

Mr. BARNUM. We believe another reason why it would be impracticable for the railroads to obtain and keep on hand these men for the work, as required by the bill, is that it is very difficult to get the right kind of men, and with the kind of work they would have it

would be still more difficult to retain them. The result would be that there would be few men on the job very frequently.

The reason why we feel so strongly about the difficulty of that feature is that the railroads have all been "up against it," to use a common expression, during the last nine months to obtain the right kind of men and enough of them to maintain repairs on their freight cars as they would like to do, and the same situation would undoubtedly apply to this class of men.

One of the witnesses of the lumber men yesterday admitted that even if the railroad companies did furnish the stakes the lumber men would still have to apply them, which bears out the contention that I have been making.

In regard to the question of materials, it would be impracticable for the railroad company to keep on hand a supply of stakes, blocks, and so forth, at every mill, lumber yard, and factory, and they would be compelled to buy from the shipper, at his own prices, material which, in many cases, is taken from piles of waste products that at mills in the Northwest are burned to get rid of them.

A great deal of evidence on the part of witnesses, supported by photographs, showed that it is a common practice still in the Northwest to burn large piles of slabs and similar material from which the staking was taken so far as needed, but there was a surplus even after obtaining the stakes.

The CHAIRMAN. Are these stakes usually run through the saw mill?

Mr. BARNUM. The practice varies very much. We found in checking up a large number of cars in the Chicago yards that quite a percentage of them, I think it was 75 per cent, were staked with saplings, and a great many of the other stakes were made of culls having strips of bark on them and sap and that sort of stuff, which made them of very little market value.

Mr. ESCH. Could not the master car builders recommend a stake of merchantable-dimension timber, like 4 by 5? Would it not be possible to get equal strength and yet retain a size that was merchantable? Otherwise you would have to have a special cut.

Mr. BARNUM. That might be possible. I think you will have other witnesses here who have made a study of that, and I can not say that I have. I am not prepared to say positively either way; but in that connection a good deal of stress has been laid by the lumbermen on the fact that stake pockets were 3 by 4 inches. Now, that is a fact on the old cars, which are fast becoming obsolete. I do not recall that they mentioned the fact that the standard stake pocket to-day is 4 by 5 inches. It is a fact, however, that it is 4 by 5 inches.

Mr. ESCH. But the upper pocket is of larger dimensions than the lower, to prevent slipping through?

Mr. BARNUM. Slightly. Many of the saplings which are used for staking cars are not cut down by lumbermen sending men into the woods especially to get these stakes, but they are the result of clearing away the underbrush to get at the lumber, the trees, the logs—to get them out to the mill. That developed in the evidence previously submitted.

The cost of staking varies, as has been touched upon by the lumbermen's witnesses. In their first request they demanded \$5 per car. They said that was their cost. Then, later, after studying the

question more, they reduced that to \$4 per car; and finally, before closing the hearing, I believe, before the Interstate Commerce Commission, they dropped to \$3.50 per car.

Our committee checked up 288 cars passing through the Chicago switching yards, taking every car we came to with forest products. We did not select them, but took every car loaded with a forest product for the period covered, and allowing full market value for everything on the car, saplings, culs, sawed lumber, or whatever, according to the estimates placed by the lumbermen in their evidence. The average price of the staking on those 288 cars was \$1.30.

Mr. STEVENS. Could you tell where those cars came from?

Mr. BARNUM. We could have told; but, of course, they came from all over the country.

Mr. STEVENS. Some from the South and some from pineries of Wisconsin, Minnesota, and Michigan?

Mr. BARNUM. The majority of them came from northern Michigan. They came from Wisconsin, Minnesota, and the Northwest.

Mr. STEVENS. From the Pacific Northwest?

Mr. BARNUM. For the most part I think they did; yes.

Mr. STEVENS. Did you have many from the South?

Mr. BARNUM. I believe not. I would have to check the car numbers and bills to determine that.

Mr. STEVENS. Do you know whether there is any difference in the stake down in the South from that in the Northwest?

Mr. BARNUM. Undoubtedly there is; the staking varies quite a good deal, according to the locality.

Mr. STEVENS. Which is the more expensive?

Mr. BARNUM. Well, not necessarily in the South, because they load some logs, and much of their staking is cheap. Some of their witnesses testified that their staking is not worth over 25 cents a car, but I do not consider that is an average price. It is the minimum. Furthermore, many of the prices that have been introduced here as the cost of staking have not been the average price. Many of the witnesses yesterday were giving not the average or the ruling conditions, but special conditions which pertained to the large lumber yards at Philadelphia and Brooklyn and some of the eastern mills, and not the prevailing or average conditions throughout the country.

Mr. ESCH. You found quite a number of the stakes were birch and poplar saplings, did you not, in these cars that were investigated?

Mr. BARNUM. We found a great variety of saplings. I do not remember just what they were, but I remember distinctly there were birch. That would be a conspicuous stake.

Mr. STEVENS. Under the rules of the Master Car Builders' Association, your inspection would not pass a rotten stake, with bark on it, would it, culled from the ordinary slab pile?

Mr. BARNUM. No; not the kind of stake you describe.

Mr. STEVENS. It would have to be a pretty good piece of wood in order to pass your inspection?

Mr. BARNUM. It ought to have a good amount of strength, the requisite amount of strength in proportion to size and kind of load.

Mr. STEVENS. Ordinarily it would have some value to it for other purposes?

Mr. BARNUM. It certainly would when it got to market, to the consignee.

Mr. STEVENS. Does it not have some value to it when it starts?

Mr. BARNUM. Well, some of these stakes have so little value, as I have explained, that they were burning the piles from which they were taken. It is possible that they took the better pieces out of those piles, but much of the stuff that was taken was quite as good as some of the stuff that was used for stakes, and it was sufficiently good for the purpose.

The CHAIRMAN. You say these stakes have to be stronger than iron stakes of the same size?

Mr. BARNUM. I beg your pardon. I did not say stronger.

The CHAIRMAN. Well, if a wooden stake is no stronger than an iron stake that will bend over almost at right angles, the wooden stake would break.

Mr. BARNUM. No.

The CHAIRMAN. I am inclined to think it would.

Mr. BARNUM. No; I intended to make that point clear. The point of that is this. The wooden stake springs. It goes a certain distance and when the load shifts it returns. The iron stake bends and stays there.

The CHAIRMAN. The iron stake might bend a trifle and stay there, but not to the extent about which you have told us, where the iron stake bent over to practically right angles. It would take a good, strong wooden stake to stand that test, I should think, without breaking.

Mr. BARNUM. It undoubtedly would.

The CHAIRMAN. That is what I wanted to get at. It does require good timber as far as that is concerned.

Mr. BARNUM. Yes, sir; it requires timber of good strength.

The CHAIRMAN. I suppose the saplings are the strongest you could get, as far as bending and returning?

Mr. BARNUM. That would be the strongest form of construction, because the round shape would naturally have more elasticity and more strength than the square shape of the same area.

Mr. STAFFORD. Does it not depend on the character of the load, whether it is lumber or whether it is logs?

Mr. BARNUM. Yes. I would say that some of those stakes which were bent the worst there were bent with loads of logs, but those same loads could have been retained and are retained regularly with saplings without any such trouble and without the stakes breaking.

Mr. KENNEDY. Of what were these iron stakes made; was it steel or wrought iron?

Mr. BARNUM. Steel. They were rolled-steel sections, commercial sections, as turned out by the rolling mills at Pittsburg and elsewhere.

Mr. KENNEDY. Your metal pockets, in which the stakes were put, would not have strength enough to bend the stakes?

Mr. BARNUM. They were made very heavy for that purpose. Some of the first ones were too light, and they broke. The pockets themselves, which were made of malleable iron, were split open and twisted. I did not mention that.

Mr. SIMS. Let me ask the gentleman this question: As a conservation question, would not the pursuit of business that encourages cutting down and using saplings be more destructive than if they used

better material sawed up? The saplings might grow up and make good-sized timber.

Mr. BARNUM. That would seem to be true.

The CHAIRMAN. Not where they are birch and poplar.

Mr. SIMS. In our country, Tennessee, poplar is about the best timber we have. We call it "yellow poplar."

Mr. BARNUM. Mr. Chairman, may I ask you, as a matter of information, whether it is your point to question the fact that these stakes bent in this shape under load?

The CHAIRMAN. Oh, no; I do not question any statement you make.

Mr. BARNUM. I did not think it was, but that is the way it sounded.

Mr. ESCH. Is there the same amount of thrust on these stakes on a straight right of way?

Mr. BARNUM. Transversely to the car?

Mr. ESCH. Is there as much lateral pressure from the load on your stakes where the roadbed is straight, or does the thrust come in going around a curve at high speed?

Mr. BARNUM. The thrust comes more particularly in going around curves. That causes a swaying of the car, which would carry with it a side motion of the load, which would have to be withstood by the stakes. Of course, on a comparatively straight road the strains would be much less than they would be on a road with heavy curves and heavy grades combined with heavy curves.

Mr. ESCH. The Master Car Builders' rules would not take into account such differences, would they? They would make a uniform standard for the whole country?

Mr. BARNUM. The Master Car Builders' rules give quite a variety of forms of staking for different loads, but they do not, as I understand it, discriminate between a straight and a crooked road. They do discriminate and they offer a choice between different ways of staking certain loads and various loads.

Mr. STEVENS. How closely do you adhere to the Master Car Builders' rules?

Mr. BARNUM. Well, I think you will find two or three witnesses following me who can give you more detail. We have two past presidents of the Master Car Builders' Association here, who are fairly posted on that, and I believe it would save your time to get that evidence from them. I could not give you the answer.

The CHAIRMAN. I will remind you that your time is running very rapidly. I do not know how many more witnesses you have, but we would like to conclude the hearing on this bill this afternoon.

Mr. BARNUM. It was quite clearly shown in the first hearing that receiving lumber yards accumulated big piles of the wooden stakes, which were either used again or sold at a price in proportion to the quality for braces in buildings, or if of low value, for kindling wood, when damaged; and one of their witnesses, Mr. Wahey, general manager of the Hines Lumber Company, of Chicago, stated that they received between five and six thousand open cars of lumber a year, loaded out about 2,000 cars a year, and used second-hand stakes, of which only 5 per cent of those received were broken so as to be unsalable. This leaves them an accumulation of about 27,500 stakes a year, which their representatives found piled up in the yards of that company.

Mr. PETERS. What is the trouble with them? Who do the stakes belong to, to start with?

Mr. BARNUM. The consignee keeps them, and he uses or disposes of them as he sees fit.

In regard to the grade of material used for these stakes, if the grade of material is low then the cost is low to the shipper. If it is of a good class, which in some cases it undoubtedly is, then the value to the consignee is correspondingly greater. In either case the consignee gets free freight on the stakes on account of the allowance of 500 pounds which was made at the time of the first hearing, and had been in effect before that on some roads.

We weighed up the stakes on 159 cars as they came and found that they averaged 398 pounds per car, including everything, staking, nails, wire, and everything to retain the load on the car. So that as a matter of fact the 500 pounds is a liberal allowance, and, as the photographs show, there are many cases where it is much less than that.

We found in many cases cars passing through the Chicago yards where a part of the load was used to stake the balance of the load or to retain it. That was true of cars loaded with posts, two-by-fours, grain doors, railroad ties, and sometimes planking.

Gentlemen, I will give way now to the other witnesses.

STATEMENT OF WILLIAM S. KALLMAN, ASSISTANT FREIGHT TRAFFIC MANAGER, NEW YORK CENTRAL LINES.

Mr. KALLMAN. Mr. Chairman and gentlemen of the committee, I would like to present for your consideration some aspects of this situation from a traffic standpoint. It has been said, and correctly, that it has been the practice of carriers generally not to make any different rates for the transportation of lumber or forest products determined upon property being loaded on flat or gondola cars on the one hand, or box cars on the other. As I say, that is a correct statement. If it were practicable to confine the use of flat or gondola cars to lumber traffic it would, in my judgment, be justifiable to charge higher rates on flat or gondola cars than on box cars, by reason of the excess of empty-car movement in the case of flat or gondola cars over that which obtains with respect to box cars.

Broadly, lumber and forest products move from the places where they are grown in the forests to the cities, and, broadly speaking, the movement of other traffic that can be practically loaded in open cars or on open cars is not in the direction from the cities to the forests, but in other directions.

Now, gondola cars and flat cars also are designed not only for the transportation of lumber and forest products, but other commodities, such as coal, iron ore, limestone, crushed stone, sand, and numerous other commodities of that character, of which there is on any railroad of any size a very considerable movement. Especially is that true of the roads east of the Mississippi River, with which I am more familiar.

If we undertook to charge higher rates on gondola cars than on box cars of lumber, we would place a premium on box cars, and occasion greater empty movement of box cars, while gondola cars, which would be available for the traffic would be idle or have to be hauled elsewhere for loads.

Therefore the carriers take the lesser of the two evils and make equal rates for box cars and flat or gondola cars, on lumber, and thereby make the use of their cars interchangeable, according to the necessities of the shipper.

Mr. STEVENS. Have you any figures as to the proportion of demands by lumber shippers, which they think the most of, box cars or flat cars?

Mr. KALLMAN. Yes, sir. It is very variable. In our case our chief lumber operations are in the Adirondack regions and in Pennsylvania. We also handle a great deal of Canadian lumber; but taking the lumber operations on our own road, the lumber is largely spruce and hemlock, and that is principally shipped in the rough or undressed condition.

Our experience is that lumber shippers prefer and, in fact, insist upon box cars for dressed lumber, planed or otherwise finished, than being rough sawed, in order to make the lumber marketable at destination. In the case of rough-sawed lumber, their preference there is generally in the direction of open cars, by reason of the less expense in loading than in the case of box cars. That is also true of the consignees. It is more economical to unload from a flat or gondola car than from a box car, and the consignee's preference largely determines the character of the car that will be furnished.

In our case we handle upward of 3,000,000 tons of lumber and forest products per annum. Our equipment is perhaps 35 per cent flat and gondola in proportion to the total. From our point of view, we prefer to furnish box cars for the lumber traffic, but recognizing the necessities of the lumber shippers, that certain kinds of lumber can not be loaded practically into box cars, by reason of its dimensions, we furnish either class of cars as may be ordered and as may be available.

The proposition here, as we understand it, is such that the only practicable method of complying with this law, or this bill if enacted into law, would be to make an allowance to the shippers. I will not undertake to rehearse what the previous speaker said as to the location of the lumber mills and the impracticability of the carriers furnishing the material actually used. I will simply indorse what he said in that respect.

So we come to a proposition to make an allowance to the lumber shippers for the material furnished. That varies in our experience from 25 cents a car up to \$5, or possibly \$6 in extreme cases.

This bill, on page 2, in defining the term "transportation," not only defines it as including lumber and timber and other appliances, but also provides—

and all services in connection with the receipt, delivery, preparation, adjustment, and fashioning of car stakes, blocks, ties, ropes, etc., used to hold lumber, timber, pipes, tubes, etc., on flat or gondola cars.

The definition of the term therefore is not limited to the term itself, but to the labor in applying the material to the cars, while in the next paragraph it is provided that the carrier shall place the stakes, etc. If that word "furnish" is to be literally construed and as comprehending that the carriers shall only furnish the material, actually furnish it, and not provide or pay for the labor, that is a different proposition from providing or paying for the labor.

In the loading of lumber, as has been stated before by other witnesses, you can not practicably separate that portion of the labor which is devoted entirely to the attaching of the stakes from that portion of the labor which is devoted to the loading of the lumber. They both proceed concurrently, and there would be no practicable means of arriving at the actual cost of the staking of the cars independent of the loading of the lumber. Therefore the question of what the allowance should be would be one to be determined in each case, with all the opportunities of fraud and collusion between the railroad agents or the carrier and the shipper, and the discrimination between shippers.

With respect to making an allowance for staking on flat or gondola cars, it would also result in discrimination between shippers. It frequently occurs that the supply of gondola cars at one place would be inadequate to the demands of the shipper, while at another station, fifty miles away, a competitor selling lumber in the same market, the supply of box cars would be in excess. If, therefore, we allow \$3.50 per car to the shipper for loading lumber on a gondola car, with no allowance to the shipper on box cars, the man who uses the box car is confronted with the alternative of seeing his competitor enjoy whatever advantage would accrue to him as the difference between the cost of the stakes and what he might charge for them, and what he would get out of the railroad; or, on the other hand, he would have to forego his shipments until he could get the railroad to furnish gondola cars.

Another objection to that proposition would be this: If we made that allowance for gondola cars, it would very greatly increase the cost of operation, because the shippers would prefer the gondola cars on account of the allowance, and we would have to furnish more of them and at the same time have more empty box cars to be hauled away from the point where they could be loaded if it were not for the allowance for the staking of the gondola cars.

With respect to the application of this bill to other freight, there are several hundred articles of commerce that require loading on flat or gondola cars. Among them may be included agricultural implements, such as thrashers, separators, cornshellers, manure spreaders, and all agricultural implements that are too wide to be loaded in box cars.

Mr. BARTLETT. Stationary engines?

Mr. KALLMAN. I am coming to that. All classes of vehicles, set up on wheels, ranging from buggies to farm wagons, including self-propelling vehicles, to be loaded in the inside of a box car. It would include all forms of engines, stationary and portable, traction fire engines, steam pumps, all kinds of machinery of such size or character that would prevent their being loaded into a box car, and which are, in fact, transferred on gondola cars. It would also include all forms of structural iron, girders, beams, channels, bar iron, pipe of all kinds, of such length or bulk as could not be loaded in box cars.

It would include a miscellaneous lot of articles, such as tanks, vats, wooden and iron, of all forms and sizes, telegraph poles—well, they are lumber and forest products—semaphore signals, boilers, and, without mentioning them all, I could furnish the committee with a list of over 200 articles that are actually so transported.

We have taken some photographs here at random of different commodities loaded on gondola cars, taken at one time and in one railroad freight yard, which I shall be glad to have the committee examine, including some structural steel loaded on two cars.

I may say that from the investigation we made we find that the use of material in blocking different commodities varies from \$1 a car to as high as \$50, and in extreme cases, such as the one I will be glad to ask your special attention to, of a combined turbine and electric generator, the structure on that car would cost, in all probability, upward of \$100. In the case of that electric generator, which is a specially constructed framework attached to the car with machine bolts 2 and 3 feet in length, it is apparent that the expense of that is considerable. If, as I assume—and I think it is correct—that framework cost \$100 to apply to that car, it is conceivable that we would transport that generator, say, a distance of 150 miles for a freight revenue of about \$40 gross, and if we had to pay for the blocking and the labor of attaching it to the car, we would be brought to the absurdity of giving back all the freight revenue and paying the shipper about \$60 premium for transporting it.

Mr. KENNEDY. The maker of that generator, I suppose, made that blocking?

Mr. KALLMAN. Certainly, sir.

Mr. KENNEDY. And he took it off the car again?

Mr. KALLMAN. Yes, sir.

Mr. KENNEDY. He sent it back and used it again when he had another generator to send away, I presume?

Mr. KALLMAN. Yes, sir; but there are some forms of machinery the blocking of which, including the cost of labor in applying it, would be greater than the freight charges derived by the carrier from the transportation.

Mr. KENNEDY. How does the lumber coming from Canada reach your road?

Mr. KALLMAN. It comes principally via Adirondack Junction; some of it via Suspension Bridge.

Mr. KENNEDY. That is loaded in Canada?

Mr. KALLMAN. Yes, sir; that is generally loaded in Canada.

Mr. ESCH. Of course our rules and laws would not be followed at Canadian shipping points?

Mr. KALLMAN. They are similar.

Mr. ESCH. Do they conform to ours?

Mr. KALLMAN. Yes, sir; the Canadian roads, I believe, are members of the American Master Car Builders' Association.

Mr. BARTLETT. Do you know whether there are very many accidents growing out of the use of the present arrangement for staking lumber? Are accidents rare or frequent?

Mr. KALLMAN. They are rare, so far as my knowledge goes.

Mr. BARTLETT. The present system has ended very well?

Mr. KALLMAN. Yes, sir.

Mr. STAFFORD. In the case of the extensive structural framework that is used for the conveyance of armatures and generators, is it the practice for the framework to be returned to the consignor?

Mr. KALLMAN. No, sir; not generally. That is the exception.

Mr. STAFFORD. I noticed that in these photographs there are some of a permanent character, bolted, as if they could be utilized for further shipments.

Mr. KALLMAN. Yes, sir; in those cases they do go back. They are attached to the car and belong to the shipper.

Mr. BARTLETT. Would the change proposed by this bill decrease the probability of accidents more than the present system?

Mr. KALLMAN. No, sir; not in my judgment.

Mr. BARTLETT. Then what is to be accomplished by the bill?

Mr. KALLMAN. Simply saddling the expense on the carriers that we feel the shippers should bear.

Mr. BARTLETT. In response to this decision?

Mr. KALLMAN. No; the decision was against them.

Mr. BARTLETT. I say the decision has held that is a reasonable regulation made by the railroads, and that the bill is to get rid of that decision?

Mr. KALLMAN. Yes, sir.

Mr. SIMS. Let me ask you if in fact the expense, whether paid originally by the manufacturer or by the carrier, would not ultimately come out of the purchaser of the lumber?

Mr. KALLMAN. We feel so, just as much as it does in the case of flour in barrels, or sugar. The cost of the package and the shipment, including all expenses of the shipper, goes into the selling price; but I hope we have pointed out to you the vast variety of freight that is necessarily transported on open cars, and which requires vastly greater blocking or bracing material than in the case of lumber.

Mr. SIMS. The reason I ask you the question is because I understood you to say it was just a question of whether the shipper should stand the expense or whether the railroad should stand the expense. My contention is that neither does stand it.

Mr. KALLMAN. It goes to the public ultimately.

Mr. SIMS. You say it requires skill to do this blocking properly?

Mr. KALLMAN. It is manifest in the case of this machinery, as is shown in the photographs, that it would be difficult for the railroad companies to employ persons skillful enough to perform this loading. Within my personal knowledge, the loading of some of this heavy machinery is done under the direction of the superintendent of the works. They can not even commit it to the ordinary employees about the mill. The superintendent directs the placing of the material, and that is a matter of experience, gained from the conditions in which the previous shipments have arrived, a knowledge of the structure of the machine, its weak parts and its strong parts, where it can be braced without breaking it, and so on.

Mr. SIMS. I understand this equipment would apply to the shipment you refer to?

Mr. KALLMAN. It would, sir.

Mr. BARTLETT. Along the same line, whatever the product may be—whether lumber or forest products—to the cost to the consumer is added this expense that the manufacturer incurs?

Mr. KALLMAN. Yes, sir.

The CHAIRMAN. Is that all, Mr. Kallman?

Mr. KALLMAN. I believe so; yes, sir.

The CHAIRMAN. Call your next witness, gentlemen.

Mr. RICH. Mr. Chairman, we have witnesses here who are prepared to deal with any aspect of the question about which the committee may desire further information. We do not desire to put in cumulative evidence, but if the committee will indicate any feature of the case which they would like to have more fully covered, we will endeavor to introduce witnesses in reference to it.

The CHAIRMAN. You have practiced law a good many years, and I suppose you have never noticed that the court tells you what evidence to put in.

Mr. ADAMSON. We never know exactly how much it is that we do not know, nor what it is.

Mr. RICH. I will call Mr. Keezel.

STATEMENT OF WILLIAM F. KEEZEL, JR., ASSISTANT MECHANICAL ENGINEER, PENNSYLVANIA RAILROAD COMPANY, ALTOONA, PA.

Mr. NEALE. Mr. Keezel, you were connected with the committee charged with the experiments in respect to these permanent stakes, were you not?

Mr. KEEZEL. Yes, sir; I was chairman of one of the subcommittees which operated on the eastern division in order to try out the permanent stakes. On this committee were four lumbermen and four railroad men.

Before any experiments were made the various types of stakes were submitted to us in order to determine which were worth trying and which were not worth trying. Out of the lot two were selected, the Harvey stake and the Cambria stake. The Harvey stake was tried out on flat cars, and the Cambria stake, which could not be used on flat cars, was tried out on gondola cars.

The Pennsylvania Railroad Company itself tried out the Cambria stake. Mr. Bucher tried out the Harvey stake. The results of our investigations amounted to the same as what Barnum told you. We came to the conclusion that the swivel stake, which was permanently attached to the car but could be pulled down on the sides, was dangerous and should not be used, and that it could not be put into such a condition that it would be safe to use on flat cars.

Furthermore, as the stakes had to clear each other as they were bolted down, they could not be put sufficiently close together to be practicable, or to load all kinds of lumber, or to load all kinds of lumber when loaded on flat cars.

As far as the Cambria stake was concerned, the sides of the car should be at least 40 or 44 inches high in order to give sufficient depth, so that the stake could be lifted high enough to take high loads. Even then it was not possible to take the maximum loads that those cars should carry. They were found expensive to maintain, and the life of those stakes was estimated to be about two or three years, on account of being damaged in various ways. Gondola cars, as you know, in the Lake regions, and in the steel works, if loaded with coal or ore or limestone, are put in dumping machines. The car is run on the machine and then the whole car is turned upside down in order to dump the contents. In those dumping machines stakes, grab irons,

any anything that is not very strong and rigidly attached are damaged.

The CHAIRMAN. You are a mechanical engineer?

Mr. KEEZEL. Yes, sir.

The CHAIRMAN. You believe you can do almost anything with money, do you not?

Mr. KEEZEL. We always turn out a job if we are ordered to do something.

The CHAIRMAN. I have heard a great many engineers say you can accomplish anything if you have the means.

Mr. KEEZEL. I think that is right.

The CHAIRMAN. And yet you think it is impossible——

Mr. KEEZEL. I did not say it is impossible.

The CHAIRMAN. For railroad companies to construct a permanent stake that will work.

Mr. KEEZEL. I did not say it was impossible. I say it is impracticable.

The CHAIRMAN. If it is possible, then it is practicable.

Mr. KEEZEL. If as assistant mechanical engineer I should get the order to put up a car with permanent application of stakes, or other means for holding lumber shipments, referring to sawed lumber, we can put up such a car, but to make it absolutely safe we would fix those stakes rigidly to the car sides.

The CHAIRMAN. You say it is impossible, then, to construct a collapsible permanent stake on a car, with all the knowledge that mechanical engineers have?

Mr. KEEZEL. It is impossible to construct a collapsible stake to be applied permanently to a flat car and last more than two or three years and be practical for all the different types of lumber shipments.

Mr. ADAMSON. Do you not mean to say it would not be economical; is not that your meaning?

Mr. KEEZEL. Regardless of expense. I have been designing cars for nearly twenty years. I know the construction of cars pretty well, and from that standpoint, as a designer of cars, I should say that it is impossible, with the types of cars that we now use——

Mr. ADAMSON. To have an adjustable stake?

Mr. KEEZEL. To build an adjustable stake to be attached to a flat car.

The CHAIRMAN. This is the only time I have ever known an engineer to admit that to do anything was impossible if he had the means.

Mr. NEALE. He has the frankness of his convictions, Mr. Chairman.

Mr. STEVENS. Would a rigid stake be troublesome in loading and unloading lumber?

Mr. KEEZEL. It certainly would, as the facilities, especially in unloading, are such that they could not lift the lumber over the tops of the stakes.

The CHAIRMAN. A rigid stake would be no more difficult to load and unload lumber, as far as the ordinary lumber is concerned, than a box car, but of course the rigid stake would not permit the use of the car for many other purposes.

Mr. KEEZEL. That is true. With a rigid stake I should say the lumber could be shifted off from the end of the car. As often happens, when they load logs they have to load logs over the end of the

car if they want to save the stakes. If you sent a lot of logs out into the open field, telephone poles, or something of that kind, and they wanted to unload those logs, a man would get up there with his ax and chop off the stakes, so that in releasing the stakes the logs drop off. That is the usual method of unloading. With the steel stakes that can not be done. They must release the strain against the steel stakes so that they can be folded down, and if we apply wooden stakes permanently to the cars I am afraid those stakes would be chopped off every time they were loaded with logs.

Mr. NEALE. Mr. Keezel, you say you have been designing our cars for the last fifteen or twenty years. Is that correct?

Mr. KEEZEL. Yes, sir.

Mr. NEALE. You have been especially charged with the construction of what is known as the steel car?

Mr. KEEZEL. Yes, sir.

Mr. NEALE. And you have been drawing up rules in connection with this raw material?

Mr. KEEZEL. I have been a member of the Master Car Builders' committee on rules of loading raw material for a number of years. In fact, I believe the original rules of the Master Car Builders' Association originated with the Pennsylvania Railroad Company. My predecessor, Mr. Lendstrom, tabulated rules for the Pennsylvania Railroad Company, and afterwards, whether as a member or simply as an assistant to a member of the Master Car Builders' Association—I do not recollect—he revised the rules in order to use them for the Master Car Builders' Association. Those rules have been modified year after year, and the Pennsylvania Railroad's rules were modified year after year, but were coming closer together all the time. Within the last five years there have been practically no changes in the Master Car Builders' rules, except, wherever possible, to make the staking, blocking, etc., cheaper, without decreasing the strength or decreasing the safety necessary to hold pipes, logs, lumber, etc.

Mr. STEVENS. Do the companies that form a part of the Master Car Builders' Association agree to conform to the rules of the association?

Mr. KEEZEL. I know of no agreement in regard to the matter, but some of the largest companies have adopted the Master Car Builders' rules as their standard.

Mr. STEVENS. What are the rules for?

Mr. KEEZEL. They are the recommended practice for all the railroads who subscribe to the Master Car Builders' Association.

Mr. STEVENS. But a good part of the roads do not conform to them, do they?

Mr. KEEZEL. Some do not. I think a majority of the shipments are now made according to the Master Car Builders' rules. There is a distinction between roads in this respect. A single-track road, a lumber road, for instance, which loads some of these cars, does not consider it necessary to stake or block the shipments as carefully as double-track roads, for the reason that if part of the logs or lumber falls off the side into the ditch it can not do much harm; but on a double-track road, if a log or some boards fall off and get on the other track, a train coming in the other direction would be wrecked. So that the double-track roads find it necessary to be more rigid in the care of lading than the single-track roads. If a

single-track road, however, should at a terminal point deliver to us, or try to deliver to us, a load which is not up to the requirements of the Master Car Builders' Association, we would reject it until they bring it up to the requirements of the Master Car Builders' Association.

The CHAIRMAN. At whose expense is that done?

Mr. KEEZEL. That I do not know. Being in the mechanical department, I do not get in contact with the expense end of it.

Mr. STEVENS. Does that happen very often, do you know?

Mr. KEEZEL. It did happen frequently in the past.

Mr. ADAMSON. I would like to go back and ask you one or two simple, easy questions. I understand your idea is that even if you devised a more expensive permanent stake its life will not be very long. If you could avoid cutting off these wooden stakes with which the load is secured, so they could be used again, they could be made to last as long as your permanent stakes, could they not?

Mr. KEEZEL. I am quite sure the wooden stakes, if not cut off and if sent back to the shipper, would last as long as the permanent stakes which we tried out and which were supposed to be the best that were known at that time.

Mr. ADAMSON. Is it not perfectly possible to relieve the strain and begin to unload the lumber by prying or breaking them out, instead of cutting them off on one side of the car so as to reduce the length?

Mr. KEEZEL. It is possible, but the expense of doing that with jacks or other means is probably more than the stakes are worth.

Mr. ADAMSON. That is only true on one side of the car. You do not have to cut them off to relieve the strain except on one side of the car?

Mr. KEEZEL. Only on one side; yes, sir.

Mr. ADAMSON. Now, if it were possible to get those stakes out without shortening them every time, or if you do cut them off a time or two until they become entirely too short for use, the freight on them to carry them back would not be any more than the freight on the permanent stakes added to the weight of your cars, to put them on permanently, would it?

Mr. KEEZEL. No, sir; in fact the permanent stakes we tried out weighed about twice as much. In the investigation we found the percentage of loads on flat and gondola cars was very small.

To go back to coal cars, coal cars usually run from the mines to tidewater, or have some definite run. You can control them. Flat cars and gondola cars go anywhere, all over the whole United States, practically. You can not keep track of them. Some of our cars may be in California, and six months later down in Florida or some other place. So that it would be impossible to keep flat or gondola cars in a certain trade. The lumbermen do not give us enough of this trade to make it possible to ship, say, from one lumber camp or one lumber region to tide water. Instead of going to tide water it goes all over the United States, which makes it impracticable to keep a certain lot of cars in that trade without equipping all of the cars of that type with the stakes.

Mr. ADAMSON. It looks to me like it would be cheaper for them to pile up their stakes after they use them and let you carry them back.

Mr. KEEZEL. I doubt whether they would be worth carrying back, for this reason. The stakes originate at a point where lumber is extremely plentiful. They are carried by the railroad companies free of charge to possibly a center of population, where the lumber is worth more. Most of these stakes are actually sold, and either used for restaking or for fence posts, or for making board walks, or for boxing.

Mr. ADAMSON. That being true, if the cost is trifling, it seems to me that the carriers ought by some instrumentality to find a means at the shipping point to arrange to dispose of that feature of the case.

Mr. KEEZEL. The carriers never own those stakes.

Mr. ADAMSON. I understand.

Mr. KEEZEL. Or have never owned them up to the present time.

Mr. ADAMSON. It appears to me they could adjust that item that is in dispute with the shipper. They could buy them and pay for them.

Mr. KEEZEL. The shipper sells lumber to consignee. I should think it would be more logical for the shipper to make arrangements with the consignee to let him have some of the results of the sale of those stakes.

Mr. ADAMSON. Let him pay for the loading?

Mr. KEEZEL. Yes.

Mr. ADAMSON. I believe if I was going to ship a load I would just ask the railroad to equip it and stake it up, and then I would give the railroad the stakes when I got to the end of the journey.

Mr. KEEZEL. The railroad has no use for them.

Mr. STAFFORD. Has the proportion of platform and gondola cars been the same over the Pennsylvania lines in the past few years, of the cars that have been placed in commission?

Mr. KEEZEL. I had this statement made up before I left Altoona in regard to the number of cars of the different kinds that the Pennsylvania Railroad has. On the Pennsylvania Railroad lines proper—that is, lines east of Pittsburg and Erie—we have 48,910 box cars and 48,769 long gondola cars which are capable of being loaded with lumber and such products, and only 1,450 flat cars; but for the lines east and lines west, and including the Vandalia Railroad, the Grand Rapids and Indiana and the Cumberland Valley—that is, all the allied lines of the Pennsylvania Railroad—we have 78,790 box cars, 73,056 long gondola cars, and 5,113 flat cars.

We therefore have more box cars than long gondolas and flat cars combined.

Mr. STAFFORD. The tendency of recent years has been to manufacture more gondola cars than flat cars, because they are more utilizable for the carriage of freight.

Mr. KEEZEL. Yes, sir. The total number of cars is 240,790, which does not include cabin cars or maintenance of way cars, nor cars of that nature.

Mr. STAFFORD. I suppose there has been a development in the length of the car over the short platform car that was constructed several years ago?

Mr. KEEZEL. The latest cars are 40 feet long, and they are steel underframe.

Mr. STAFFORD. Is there any advantage in the carriage of lumber in using a platform as distinguished from a gondola car?

Mr. KEEZEL. I do not quite understand what you mean by the platform car.

Mr. STAFFORD. A flat car, as contrasted with the gondola car.

Mr. KEEZEL. It is an advantage to shippers and consignees at times to have flat cars, on account of loading and unloading. If the sides of a gondola car are very high, it is troublesome to unload, and also troublesome to load, unless they have facilities for just that purpose.

The CHAIRMAN. Is that all, Mr. Keezel?

Mr. KEEZEL. Yes, sir.

STATEMENT OF CHARLES A. SCHROYER, SUPERINTENDENT CAR DEPARTMENT, CHICAGO AND NORTHWESTERN RAILWAY COMPANY.

Mr. SCHROYER. I am superintendent of the car department of the Chicago and Northwestern Railway Company, by whom I have been employed twenty-four years in the capacity of constructing and maintaining cars. I also have charge of the inspectors who inspect cars as they are passing over the road. I was also a member of the western committee who investigated the matter of permanent car stakes. Inasmuch as that has been gone into pretty thoroughly, I do not think it is necessary for me to say anything further, as I could not add much to what has already been said.

The CHAIRMAN. What was the experience on your road as to permanent car stakes?

Mr. SCHROYER. The experience on our road with the permanent car stakes was that they formed a very serious element of danger in the handling of cars in and through our switching yards. One of the yardmasters, one of the switching foremen, and one of the men employed in the switching gangs said to me that they would not handle cars that were equipped with permanent stakes, as those cars were, because of the sharp corners of the material of which the stakes were made, liable to catch their clothes.

At the time this remark was made to me the cars were in a badly damaged condition, as a result of the difficulty they had had in unloading the cars, they being loaded with telegraph poles. There is a photograph in our report, which you will see, of those cars standing on adjacent tracks, directly opposite each other, which was done for the purpose of showing the distance between those cars standing on those ordinary switching tracks of the ordinary centers; that is, from the center of one track to the center of the other, and the liability of a man being injured by being in that position, in which they are required to be constantly. It was at that time that they made the remark to me that it was a dangerous thing and they would not handle it.

It was also objectionable to us, because the applying of a permanent car stake limited the car in its service and practically made a special car of it. Flat cars are used for forest products of different kinds, sawed lumber, poles, posts, piling, pulp wood, bark, and various kinds of forest products, with all of which you are familiar. It does not follow that the stake that is required for one class of loading is necessarily the kind of stake that is a good thing for another kind of loading, and when you talk about stakes for flat cars you

ought to talk about a specific stake for a certain kind of loading, and then go to a stake for another kind of loading.

The CHAIRMAN. What is the difference in the character of stakes required for different kinds of loading?

Mr. SCHROYER. Almost any kind of stake would do for the loading of sawed lumber, where it piles up square along the edge of the car.

The CHAIRMAN. Any kind of a stake will do?

Mr. SCHROYER. I say almost any kind of a stake will do.

The CHAIRMAN. But, then, the kind of stake you have for something else will do for that; so that is not differentiating. What is it that requires a different kind of stake?

Mr. SCHROYER. The log, the pole.

The CHAIRMAN. What kind of stake does the log or pole require?

Mr. SCHROYER. A very much stronger stake.

The CHAIRMAN. More than a four by five?

Mr. SCHROYER. Not necessarily more than four by five. I think if you gentlemen would read our rules for loading you would gain a great deal of information in this matter.

The CHAIRMAN. That is what we have requested you to come before us for, so as to save us the necessity of doing that.

Mr. SCHROYER. I think it is more than twenty years ago that the Master Car Builders' Association, as a result of difficulty they had on the road, took up the establishment of certain rules for the loading of lumber. They were very simple and very few at that time. The cars were 26, 28, 30, and 32 feet in length, and the class of loading then on that kind of a car was confined almost wholly to sawed lumber; but as the cars were increased in size and increased in capacity, it afforded facilities for manufacturers to assemble in their own works materials for shipment which previous to that time they had to send out and assemble at the place where the work was being constructed. As the result of that the car builders were required to modify and add to their rules from year to year, and that has been done for twenty years.

Mr. STEVENS. The Interstate Commerce Commission tells us that quite a proportion of the roads do not pay any attention to the car builders' rules.

Mr. SCHROYER. I think that needs modification, the same as my explanation of the different kinds of car stakes. On the Northwestern Railroad, when we have a load of lumber consigned to some local point on our own line, all we care about in that connection is to have that load of lumber securely loaded, safely loaded. If that load of lumber is to be transported a long distance over a number of railroads, then we require that that load of lumber shall be secured according to the car builders' requirements, because if we do not, and we deliver it to the Pennsylvania Railroad Company at Chicago, and it is not loaded according to the car builders' requirements, they will say to us, "Here, Mr. Northwestern Railroad Man, you secure this load according to the requirements," and we do it.

The CHAIRMAN. At whose expense?

Mr. SCHROYER. At the expense of the railroad, because in so far as I know there has never been a dollar paid by any shipper on the Northwestern road for that class of work.

Mr. ESCH. Who inspects the staking and loading at the point of shipment?

Mr. SCHROYER. At the point of shipment—I should probably make some explanation as regards that. I think it would be a very conservative estimate to say that on the Northwestern Railroad we load probably a hundred cars a day with dairy products, machinery, engines, boilers, stacks, vehicles, and things covered by this law. That loading would take place at probably 50, 60, or 70 places, and in this law the service rendered, as I understand it, implies that the railroad company should perform the labor of securing these loads. If we had to do that, it would require sending mechanical men or skilled men from our shops, where they are now located, 25 or 30 miles out over the line to do this class of work, having it to do to-day in one yard and to-morrow in some other yard, and requiring an hour perhaps to do it to-day, if the men could be got there to do it, or probably five hours, but requiring a condition of things which makes it impracticable for the railroad men to furnish the men to perform that service and do it in a satisfactory manner, because we could not get the men there at the time the work is to be done.

Mr. SIMS. It would be apt to delay shipment, would it not?

Mr. SCHROYER. It would delay shipment, necessarily. And if we undertook to maintain men at these places, many of them, we would require 20 men one day and the next day only 1. It would cost the railroad companies many times to do that work what it now costs the shippers to do it, because they have the men there to do the loading, and the staking of an ordinary car is a very small portion of the labor of loading.

That condition is changed entirely when it comes to such loads as you have photographs of there before you. We have not sufficient men on the Northwestern Railroad with sufficient skill to do that staking and secure that loading. The very best skill that the manufacturer of that machinery has is used for the purpose of directing how that piece of machinery shall be secured on that car. You say let us ship that material back to them after it is unloaded. Every stick of material that is on those cars to-day is utilized by the men who will unload the machinery on that car for the purpose of transporting the machinery onto its foundation, where it is to be used. So that it possesses that value to them; and if that material was to be shipped back, they would have to get other material.

If you say to the railroad company, "You do that staking," it would naturally follow that we must keep in those yards large quantities of the various kinds of dimension timbers for that purpose.

The CHAIRMAN. Your statement that they use all this lumber is a little broad, is it not?

Mr. SCHROYER. No, sir; because we have been getting machinery of our own, and we know just what they do with that material.

The CHAIRMAN. I have so repeatedly seen a lot of this stuff left without being carried away by the men who carried away the machinery that I am obliged to think—

Mr. SCHROYER. Well, when that material has fulfilled the function of transporting that machine from the car to its foundation, then there is no further use for it, but it has been of great value to them for that purpose.

Mr. SIMS. You just said it would cost the railroad four or five times as much to do the staking—

Mr. SCHROYER. For labor alone.

Mr. SIMS. As it costs the shipper at the present time.

Mr. SCHROYER. Yes, sir.

Mr. SIMS. Then, if this bill should pass in that way, it would add to the burden of the ultimate consumer of the lumber to that extent more than he pays now, when it is furnished by the mill men?

Mr. SCHROYER. I should say so. I am not conversant with that part of the question, but I should say that if it cost the railroad three or four or five times as much to do that staking as it now costs the lumbermen, the railroad companies would want to add that much to the freight. I should say so, at least. I do not know that it would.

Mr. SIMS. They would naturally have to reimburse themselves by the rate.

Mr. SCHROYER. Naturally; yes, sir.

The CHAIRMAN. You are not a freight expert?

Mr. SCHROYER. No, sir.

The CHAIRMAN. If you were, you would learn that that has very little to do with it.

Mr. SCHROYER. If we were required to do that staking and furnish the material, it would follow that we would have to carry in those yards a vast amount of material, when you consider the large number of places where this timber would have to be carried for doing that class of work, and we would have no means of protecting that timber at all. It would be at the mercy of anybody who wanted to go to that pile, because it belonged to the railroad company.

The CHAIRMAN. I think in any large city —take Chicago, for instance, which is your main city—it would be quite practicable for you to employ a set of men for the purpose of staking lumber cars, where there are large numbers that go out. That, you think, would not apply to the fastening of machinery and things of that sort where a machine might be loaded at a shop on the road, and would not apply where a load of lumber is located in the woods somewhere.

Mr. SCHROYER. The majority of our loading is in the woods. We have a large number of manufacturing concerns on our line. We have the American Bridge Works on our line, and some days they will load 5 cars and other days they will load 20 cars, all of which would need staking. Now, you see what that would mean to us. If we had to furnish, say, 5 men to-day and 20 men to-morrow, it would necessarily follow that those men must be right there with them during all the time of the process of loading, and when the loading is completed it is essential that those men should be gotten 5 or 10 miles back to the works again.

Therein is the increased burden that is imposed upon the railroads if they are compelled to do that part of the work. Now, if it is a matter of fixing a uniform price for doing the work, there is going to be an injustice to the railroad companies in that and an injustice to some of the lumbermen, because some of the lumbermen to-day do this work very cheaply. It costs others, again, more, and I think we all know what it would mean if that was done.

Mr. ESCH. How does a knowledge of the Master Car Builders' rules get to the shipper?

Mr. SCHROYER. They are furnished through the agents.

Mr. ESCH. Every local agent along the Northwestern system has copies of the rules?

Mr. SCHROYER. The local agents along the Northwestern Railroad have not all of the requirements of the Master Car Builders' rules for loading—only just such requirements as are applicable to their own territory. We do not send out the full rules of the Master Car Builders' Association to all the agents, but in our lumber districts we have simple rules, all of which are based on the requirements of the Master Car Builders' rules, and that is their rule and guide. The trainmen, who are as good judges of the proper loading of a car as anybody I know of, are directed by our officials that where they find a car that is improperly loaded, it shall be reported to the agent. So that we depend upon our trainmen at those isolated places for the inspection of those cars. If they are not properly loaded, they do not take the car out until it is properly loaded or staked. At our interchange points we have in the hands of our inspectors the Master Car Builders' rules for loading materials, and they are governed by those.

Mr. ESCH. Have you rejected shipments coming from connecting carriers because of the loading being not in compliance with the Master Car Builders' rules?

Mr. SCHROYER. No, sir; but we have taken shipments that were not according to the rules, made them according to the rules, and let the car go on without delay.

Mr. ESCH. At your own expense?

Mr. SCHROYER. Well, we settled that up with them.

Mr. ESCH. You charged it up to the connecting carrier?

Mr. SCHROYER. Yes, sir. The Master Car Builders' rules for the loading of material, up to a year or more ago, were recommendatory; that is, they recommended that those rules should be observed, and their recommendations were all based on the fact that serious injury, serious accidents, have occurred on railroads due to the fact that the materials were not properly loaded. It is to avoid accidents of that kind that the Car Builders' Association have endeavored for twenty years to get up rules that would load them in such a manner as would make them safe for that purpose.

The CHAIRMAN. The railroads generally are, I take it, very anxious to enforce strictly rules which will require the safe loading of lumber, as well as other products?

Mr. SCHROYER. Our entire object is to have the load safe, to avoid accident. That is the entire aim and object of the Car Builders' Association in this matter.

The CHAIRMAN. Is that all, Mr. Schroyer?

Mr. SCHROYER. Yes, sir.

The CHAIRMAN. Have you another witness?

Mr. NEILL. We would like to have Mr. Bates, of the Pennsylvania Railroad, make a brief statement.

STATEMENT OF E. P. BATES, GENERAL FREIGHT AGENT PENNSYLVANIA RAILROAD COMPANY, PHILADELPHIA.

Mr. BATES. Mr. Chairman and gentlemen, I would like to indorse what Mr. Kallman has said in regard to the bill before us and to emphasize a few of the points.

The railroads in furnishing cars try to accommodate themselves to the desires or wishes of the shipper, furnishing the best equipment possible to suit the traffic that is reasonably available. Having furnished those cars, we feel that, as 95 per cent of that carload traffic is loaded by the shipper at his works or siding and unloaded by the consignee at his works or siding, far removed from the railroad station, it would not be possible for the railroad company to have employees scattered entirely along their right of way to take any part in the loading of carload freight.

We partly justify the difference between a carload rate and a less than carload rate for this reason. A lumber shipper between Buffalo and New York has, we will say, a rate of 13 cents per hundred pounds. He loads the car and the consignee unloads it. The less than carload shipper pays 19 cents per hundred pounds. The shipper not only gets the benefit of the lower rate, but he avoids the expense of carting to the railroad station, and the consignee avoids the expense of carting from the railroad station. In other words, they load without any expense for teaming, get the reduced rate at the lumber pile, and deliver it on a private siding away from our terminal, without any expense of cartage. They save that expense, and in addition to that they get the benefit of the lower rate.

Other traffic, such as has been referred to by Mr. Kallman as being covered by this bill, as well as lumber and timber, is handled exactly in the same way. I think over 95 per cent of those shipments are loaded away from our terminals. The shipper wants to load them where they are made, without any expense of moving them. The consignee wants them placed within a few feet of where he is going to use them, with no expense for carting.

It would be impossible for the railroad company, as I said before, to have employees there to take an interest in the loading, and therefore ever since I have had anything to do with railroading it has been the practice of the railroads to consider that when a car was ready to move we gave a receipt for it, and that property was not ready to move until the car was properly staked or blocked so that it was safe for transportation.

So that we have always considered it reasonable that the shipper, in addition to putting the package on the car, should properly brace it. It is a part of the loading, and must necessarily be so when it is away from the railroad employees.

If this bill should pass, we would either have to scatter our employees along the road to perform that work or pay the shipper. That naturally opens up the question of differences, discriminations, rebates, and everything else. If that expense is thrown upon the carrier, it would only seem fair that we should have additional revenue. That additional revenue could not be placed on lumber or machinery or agricultural implements or anything else that is loaded exclusively on open cars. We would have to make the rate on closed cars as well. Those commodities are interchangeable. The shipper

is going to load where he gets the best advantage. He wants the box car because it may be cheaper—I means separate from the protection of his property; and if we go to the expense of blocking on open cars, he will not be so particular about his crating or boxing. He will expect the railroad company's bracing to protect the shipment against itself, increasing the responsibility of the railroad. It is our feeling, therefore, that we would have to have some extra compensation; and that would apply to the closed car as well as the open car, because, as I say, they are interchangeable.

Again, we feel that if the cost of the blocking, bracing, and handling of these shipments is to be assumed by the railroads, it would not be as proper as for the shipper to continue to do it, because our employees could not be as familiar with the character of the freight, and if we did the work we would have to depend on such labor as we could find, and the machinery, or whatever it might be, would be more likely to damage, as it would not be braced in a way so that it could be handled properly.

Again, we have shipments on two or more cars. It is well known that the manufacturer of structural iron, bridge material, aims to put as much finished work at a reasonable point of shipment as possible. He can rivet the pieces together much cheaper at that point than he can in the field, and if we are to go to the expense of handling the commodity he gives to us, put in the blocking and bracing, and taking it away from him, he will probably be tempted to make those shipments as long as we will permit the cars to go, six or eight cars, with the bracing at our expense. He saves not only the bracing, but the extra expense of riveting it together at the point of destination.

That same thing applies to the manufacturer of other kinds of machinery. They will try to ship them in one piece where they now ship them in two pieces, because it would be cheaper than to go to all this extra expense that we will have to assume under this bill.

The CHAIRMAN. Your position is that, taking a machine somewhat fine or complicated, the man who produces it now secures it at his own risk?

Mr. BATES. Yes, sir.

The CHAIRMAN. Knowing what the danger is?

Mr. BATES. Yes, sir.

The CHAIRMAN. Whereas, if you had to secure it first, you would not know what the value was, or the complications of this machinery, and without knowing that you would have to secure it at your risk?

Mr. BATES. Yes, sir. Take shipments of plate glass, which are quite heavy over our system. Those shipments will run probably an average of about 7,000 pounds per car, and I would not like our men to attempt to brace those big shipments on the cars. They would be sure to strike a weak point. The result would be that with the twisting and shifting of the load there would be breakage before the car got to its destination.

The CHAIRMAN. You do not ordinarily ship plate glass on flat cars, do you?

Mr. BATES. Yes, sir; it goes all carloads, and the bill as it stands is so far-reaching that everything which goes on an open car is included. Of course the evidence we heard yesterday in reference to this appeared to be entirely with regard to lumber, but I want to call attention to the fact that it does not stop there, as Mr. Kallman

testified and as those photographs will show, and they are only typical of a lot of other shipments, other than machinery, the cost is more than the freight rate. The cost of placing the protection or that article on the car is just as much for 10 miles as it is for a thousand, and the expense of placing it there must be borne by the railroad company.

The CHAIRMAN. Of course that would be an easy matter to adjust.

Mr. BATES. Well, it is there in the bill.

The CHAIRMAN. All you have to do is to base the freight rate on those things.

Mr. BATES. It is not so easy to change a freight rate, especially upward.

The CHAIRMAN. You have changed the freight rates upward on nearly everything in the country in the last few years, and I should not think it would come so hard.

Mr. BATES. Well, I just wanted to call attention to those points. We feel very strongly that after we have furnished the best available car we can furnish which, in the best judgment of the railroads and their principal shippers, is suitable for traffic, with the benefits a carload man gets, avoiding all cartage, the property being taken from his own place and delivered just where he wants it, at a lower rate, the loading, which has always been our rule, at the expense of the shipper, should certainly include the protection of the property on the car, and that to an extent that will make it safe for transportation.

Reference was made a few minutes ago to the returning of these wooden stakes to the point of shipment. In my experience I have never known but very few cars that go back from the market to the point of shipment. The cars are fed into those sidings from which lumber is shipped from the most available distributing points, and to get the stakes returned would mean a special movement of a car with those stakes back to the point of shipment.

Now, stakes may be accumulated at a large center like Jersey City, Chicago, or Philadelphia, but even there you would have trouble. They are not in our possession. The lumber is generally carried into the man's lumber yard. It would be hard to gather up a carload and send them back, even if it was the desire of the shipper or consignee that that should be done. It is very much scattered. The lumber comes out, 10 cars from a mill to-day, and goes to ten different destinations. So it would be pretty hard to gather those stakes up. I assume if they are so expensive and the consignee can not get anything for them, that he would attempt to save those stakes and probably return them at a nominal freight rate rather than furnish new material every time.

Mr. ADAMSON. The rent would be pretty high on the place to keep them until he could get a carload together?

Mr. BATES. It is in his own yard. There is no rental at all. Nearly all of this lumber is unloaded in private lumber yards.

Mr. ESCH. Yesterday somebody, perhaps one of the lumbermen, tried to draw an analogy between their condition and the condition of men shipping coke, charcoal, and grain, in that the railroad company furnished the slats or lumber to prevent the coke from coming out of the doors of such cars, and also provided the grain-door car, therefore arguing that in a shipment of lumber the railroad company should likewise furnish the stakes. What have you to say about that?

Mr. BATES. In the first place, the practice of the Pennsylvania Railroad and a number of other roads is that we furnish racked gondolas. We furnish grain doors for grain in box cars, and we do that for competitive reasons. The grain is generally moved from one elevator to another. The heavy movement of grain is not loaded by the shipper. It is loaded through an elevator. The package or the car which contains that grain must be a good car. For instance, take lake grain. We load up a trainload of cars. We had 200 cars the other day from Buffalo, from our own elevator. We took it to Philadelphia and placed it in our own elevator there. Neither the shipper nor the consignee had any chance to even see the grain.

Now, it must be necessary for us to put that car in condition or pay for the grain that does not reach Philadelphia. Where cars are loaded by shippers, it was customary to furnish permanent grain doors, furnished to the car, that slide along the sides. It is a part of the equipment. In the absence of such a complete car we pay a nominal amount for the grain door furnished by the shipper.

With reference to coke I am not sure. That is a little out of my department. I am not sure about the slats. Our racked gondolas are racked in order to get a heavier load. We handle from ten to eighteen hundred carloads of coke from one region per day. Those cars move in solid trains to a furnace market. The coke to Ashtabula or Cleveland. Those cars come back loaded with ore, so that they do not always return empty; but even if they did, they make a round trip in three or four days, or two days; whatever time it takes to move them. They come back very quickly, and are moved in solid trains, shifted back and forth.

We feel that is economy. It is a box-car freight. It is bulk freight, and if we did not furnish a car with a roof we could not haul the coke. We can not take it on a gondola or flat car. Therefore we rack those gondolas and get about 90,000 pounds in a car. If we did not do it and loaded it in gondola cars, we would only get 40,000 pounds. Coke is only one-half the weight of coal to a cubic foot.

We think it is economy for us to build that box without a roof and get a maximum load, quick returns, and solid trains. It differs from lumber to the extent that it is box car or bulk freight. There is no commodity that we discriminate against. All open-car freight is treated the same way. If this lumber is box-car freight, the lumberman has the privilege of shipping it in box cars and taking his chance of getting a box car with other box-car shippers.

The CHAIRMAN. One moment. It is not 4 o'clock, and I think we ought to give a little time to the lumbermen, if they desire any time. How many more witnesses do you wish to present; any more?

Mr. NEILL. There are three or four here from the Pennsylvania Railroad, sir.

The CHAIRMAN. The Pennsylvania Railroad has already been well represented.

Mr. NEILL. I do not think we care about presenting any more, sir.

The CHAIRMAN. Is there anything else?

Mr. RICH. We have numerous witnesses here who are pretty well loaded with this subject, but we feel we have wearied the committee, perhaps, enough.

The CHAIRMAN. You have not wearied the committee at all. Don't let that concern you.

Mr. Esch. Is it cumulative testimony that you have?

Mr. Rich. It is very similar to what we have had.

The CHAIRMAN. We do not want to run the hearing over to-day.

Mr. Rich. We will rest here, after Mr. Bates has finished.

Mr. Bates. I do not know that I care to say anything more, unless you have some questions to ask along these lines. I have a little memorandum prepared here that I should like to file, for such information as you may be able to gather from it.

The CHAIRMAN. You may hand that to the stenographer, and it will be printed.

(The memorandum referred to is as follows:)

WASHINGTON, D. C., January 26, 1910.

This proposed amendment will put upon the carrier not only the burden of transporting any material that may be offered, but also the entire cost of all work of securing shipments, regardless of kind, size, shape, length of haul, or the revenue derived from the transportation. This burden should not be placed on the carrier.

Railroads furnish cars of different kinds—box, stock, gondola, flat, etc.—which in their best judgment and in the judgment of principal shippers are best suited for the traffic offered, and these cars are so constructed that the lading loaded upon or therein can be protected at minimum cost. Master car builders' rules and other rules of railroad companies prescribed for loading traffic on open cars have been such as experience and prudence have dictated, they being necessary in order that traffic loaded on gondola or flat cars may be safely transported.

Generally speaking, the railroads have always required that shippers should load and consignees unload carload freight, as such shipments are usually loaded at shipper's plant or siding and unloaded at consignee's plant or siding, such plants or sidings in many cases being far removed from the railroad stations. With this custom—and as properly a part of it—shippers are required to secure loads for safe carriage. The shipper can best fasten the load upon the car. He has the facilities and men constantly at hand, and can do the work more satisfactorily and economically than the carrier, and the proper bracing and securing of property is in reality a part of the operation of loading. These requirements do not appear unreasonable or unjust to shippers. They have grown up with the development of railroad transportation. In addition to this, carload rates of freight have been made with reference to such requirements, and because shippers load and the consignees unload carload freight, railroads partly justify the difference in rates between carload and less than carload shipments. This practice antedates by many years the passage of the act to regulate commerce.

It is not possible to furnish cars that will handle with safety shipments of odd sizes and shapes without some protection. Therefore, where a shipper is furnished with cars best suited for his shipments, it is certainly proper that he should be required to secure his shipments upon or within the car by appropriate blocking, staking, or otherwise, to protect it from damage to itself, and so it can be safely transported.

Many arguments might be presented why it would not be desirable that this burden be placed on the carrier. As it is not possible for the carrier to secure the property on gondola or flat cars, especially when loaded at shipper's plant or siding, it necessarily follows that the shipper must be paid, as provided for in the amendment, for performing this service, and if an allowance were to be made it would open the door to discrimination, as the cost would vary with different sections of the country, with different parts of the same section, and with different and adjoining shippers, also with different kinds of freight. On account of the wide variation in shipments loaded on gondola or flat cars, the cost of properly protecting the property would vary between different shippers, based on the character of the freight and the manner of packing. The more careless a shipper is, the greater the expense to the railroad company, while the careful shipper would be paid a smaller amount and the door would be open to wide discrimination.

Again, if shippers are paid for this service, it will result in their loading on gondola or flat cars considerable freight that is or could be loaded in box cars, for the reason that if the carrier bears the cost it will be cheaper to the

shipper than for him to go to any trouble or expense in loading his freight in box cars; thus the shipper who properly packs his freight and loads it in box cars would receive nothing for the service performed, while the less careful shipper placing his freight on a gondola car would be paid for the blocking, bracing, etc. Further, shipments would not be as securely crated or boxed, as shippers would expect the protection given by the railroad company (if blocked or braced by the railroad company) to insure shipments being safely transported or the railroads be responsible for any damage that may occur.

If the carriers are required to perform or pay for this service, it is a question where the dividing line should be drawn between the proper packing of freight and the bracing, blocking, etc., required for safe transportation. Many shipments, such as machinery, electrical machinery, etc., should be properly boxed or crated, and when loaded on gondola or flat cars the boxing or crating is often taken care of in connection with the blocking, bracing, etc., and in such cases it might be considered that the blocking and bracing should go to the extent of including the boxing or crating to properly protect the property.

If carriers are expected to perform this service, additional revenue would certainly be necessary, as the bracing, blocking, wiring, etc., is expensive, in some cases amounting to as much or more than the revenue received from the transportation. It would not, in my opinion, be practicable to make two rates on the same commodity—one for box cars and another for gondola or flat cars—and the result would be that the railroads would find it necessary to advance the ratings on all commodities that could be loaded on flat or gondola cars, and charge that rate when shipments are loaded in box cars, as well as when loaded on flat or gondola cars, and thus penalize the shipper who has freight that is not of extraordinary character, size, or dimensions, and goes to the trouble of properly boxing or crating his shipments and loading them into box cars rather than on gondola or flat cars.

If this blocking, bracing, etc., be furnished or paid for by the carriers, it would be available for practically only one shipment, as material could not be furnished that would suit all shipments, and to be used a second time it would, as a rule, have to be returned to original point of shipment (at considerable expense) to be used in connection with the same kind of freight, and this would be practically impossible. In addition to this, in the unloading at destination, usually the blocking, bracing, etc., is in the custody of the consignee and is disposed of as he elects. It would not be possible for the railroad to control it and have the benefit of it on subsequent shipments. In fact, we understand that in many cases the allowance of 500 pounds carries that amount of lumber free from point of shipment, where it is worth from \$6 to \$10 per thousand feet, to a market 300, 500, or more miles away, where it may be sold for at least its value at point of shipment.

There is considerable freight that requires gondola and flat cars, and it would be not only discrimination, but unjust to the carrier, for the carrier to pay for the blocking on such freight on flat or gondola cars, while similar freight is transported in box cars, being placed in proper package or properly set up in car at the expense of the shipper.

In addition to the freight requiring gondola or flat cars of single-car length, considerable traffic requires two or more cars, and it is certainly not the duty of the railroad company on this class of freight to go to the expense of putting it in shape for safe transportation. Railroad companies are only expected to furnish cars of ordinary length.

As railroad companies furnish cars which in their judgment best suit the traffic offered, and the shipper requests a certain kind of car, or if he must have a certain kind of car for his shipments, it would certainly be proper that he should be required to secure his shipments upon or within the car by blocking, staking, or otherwise.

I submit for your information photographs of shipments from the General Electric Company, at Schenectady, N. Y., which, I think, will show at a glance the injustice of a law such as that proposed. Moreover, this typifies everyday practice in shipments of many other commodities as well as electrical machinery, but by no means show the extreme to which such requirements may go, and as the carriers can not attempt to do this work the shipper would have to be paid for doing so.

Again, the same protection is necessary for a shipment for from 10 to 50 miles' haul as for a shipment for from 800 to 1,000 miles, and therefore our expense under the proposed law would in no way be based on the revenue derived.

The above is simply a general outline of the objections to the amendment as

proposed, or any amendment that would place upon the carriers the burden of furnishing bracing, blocking, staking, etc., to secure freight loaded on gondola or flat cars. We feel that after the railroad company has furnished the different classes of cars that in their best judgment would suit most of the traffic offered, it should be the duty of the shipper to so block, brace, or otherwise protect lading on open cars that it can be safely transported to destination.

E. P. BATES.

The CHAIRMAN. Do the gentlemen in the lumber business desire to be heard further?

Mr. BRONSON. Mr. Chairman, I do not believe we have any further evidence to put in. There are a good many details of this subject that we might like to take up and discuss.

The CHAIRMAN. Mr. Neale, what witnesses do you expect to have here in the morning, and on what subjects especially; can you tell?

Mr. NEALE. We have not definitely decided, Mr. Chairman. I understood the boiler bill might be taken up to-morrow, but I am not accurately advised as to which bill will be taken up.

Mr. BRONSON. Mr. Chairman, with your permission, may Mr. Price make a few brief remarks about one point?

The CHAIRMAN. Certainly; we will hear Mr. Price.

Mr. NEALE. Is it the understanding, then, Mr. Chairman, that we will take up the boiler bill to-morrow morning?

The CHAIRMAN. It is immaterial to the committee which bill is taken up.

Mr. NEALE. Then we will decide among ourselves which bill we will ask you to take up.

The CHAIRMAN. We will now hear Mr. Price.

STATEMENT OF L. H. PRICE, REPRESENTING THE CYPRESS MANUFACTURERS' ASSOCIATION OF LOUISIANA.

Mr. PRICE. Mr. Chairman, the statement has been made here to-day that we can produce these car stakes from culled logs. Now, gentlemen, I take it for granted that you have some idea in regard to lumber. You have heard the statements made here regarding the requirements of the Master Car Builders' Association as to the quality of these stakes, and I will submit to you the question whether you think it possible for us to furnish the class of stakes called for by those requirements from a culled log. The timber that we saw at our mill comes about 45 miles. It is put in the water, or the skidder, and there towed to our sawmills. It would be impossible for us to get binders or saplings and float them down the river and have them stay on the raft until they got to the sawmill. That would be simply out of the question.

Another thing is this: You take these saplings and they are only applicable to a certain class of material that you load; for instance, telephone poles. You know, when you come to put these stakes in the side of a car it is almost impossible to get saplings that are all straight. One will be this way, one around that way, and so on. You can load telephone poles on cars of that character, but you can not load lumber and do it to advantage and have it ride safely. That is simply out of the question. Furthermore, the statement has been made here to-day that about 95 per cent of these mills are away back in the woods, away back from the line of the road. That is not the fact, gentlemen. I would like to see things presented fairly. You

go over the lines of the roads of Louisiana or Mississippi or any of these Southern States, and you will find sawmill after sawmill right on the main line of the road, so that they would not have to send their men away back in the woods to examine these stakes and to see that the cars were properly staked. The cars are right at the station; but I do not consider that practicable. I think a solution could be brought about, that an agreement could be made with the manufacturers of lumber and the railroads that would be amicable and fair to both parties.

The CHAIRMAN. Let me see if I understand you.

Mr. PRICE. I do not think we are that greedy that if it was up to us to say to the railroad companies what they should pay to us for the stakes we would put on an exorbitant price simply because we might have the opportunity of so doing.

The CHAIRMAN. Just assuming, for the purpose of argument, that we should determine that car stakes are not practicable—and I do not express any opinion about it—would it then be practicable for the railroad companies themselves, through their employees, to stake the cars rather than have the shippers do it?

Mr. PRICE. I hardly think it would be practicable for the railroad companies to do that.

The CHAIRMAN. Then your idea is, assuming the same proposition, that the proper solution would be for the shippers to furnish the stakes and the service in connection with them, and the railroad company should make an allowance for that to the shipper?

Mr. PRICE. I think that would be fair.

The CHAIRMAN. Do you think that should be a fixed allowance all over the United States, or an allowance based upon the actual cost in different places?

Mr. PRICE. Well, it might be done upon actual cost in different localities.

The CHAIRMAN. If it were a fixed allowance, and it amounted to considerably more than the actual cost, it would itself be in the nature of a rebate to the shipper, would it not?

Mr. PRICE. I do not quite understand.

The CHAIRMAN. If it were a fixed allowance, fixing it upon the average cost throughout the United States, in those cases where the fixed allowance amounted to a good deal more than the actual cost, it would be in the nature of a rebate to the shipper?

Mr. PRICE. Yes, sir.

The CHAIRMAN. In other words, where you made a fixed allowance of \$3.50 a car, and it cost \$1 a car to do the work, and so forth, it would amount to a rebate of \$2.50 a car?

Mr. PRICE. Yes, sir.

The CHAIRMAN. You would not want that done, I suppose.

Mr. PRICE. No, sir.

The CHAIRMAN. Because that would be giving an undue preference to a shipper in one place over a shipper of lumber in another place.

Mr. PRICE. My idea would be that all the shipper would ask for would be the actual cost.

The CHAIRMAN. And that would be arrived at between the shipper and the railroad agent?

Mr. PRICE. That could be arrived at in that way, or that question could be taken up with the railroad officials, acting in that capacity.

The CHAIRMAN. Who would determine?

Mr. PRICE. It could be a matter that could be agreed upon, just the same as the purchase of lumber can be agreed upon.

The CHAIRMAN. Between the railroad company and the shipper?

Mr. PRICE. Between the railroad company and the shipper.

The CHAIRMAN. Now, suppose you are in that business, and the railroad company says, "Well, we think you should do this work cheaper now. We won't allow you more than \$2 a car." Then there is a rival company of yours, just a short distance away, in which some of the officials of the railroad company own stock. They say, "Here, you are under very great expense. We will allow you \$10 a car." What would you say to that, after it had been in operation about a year?

Mr. PRICE. I do not think there would be a case of that kind, because it resolves itself into what is the value of that lumber.

The CHAIRMAN. No; you are talking now about an agreement which you propose that people should make, that is not published.

Mr. PRICE. Exactly. Should not that agreement be based upon the value of the products?

The CHAIRMAN. It should be, but it often has not been. We have discovered long ago that agreements of that sort were not based on the value of the product, and the whole object of legislation in recent years has been to prevent discrimination being exercised by a railroad company in favor of one shipper over and against another shipper. But how would you escape the power to grant a discrimination of that kind, when you permit a railroad company to say to you, "We will allow you \$2 a car, and we will allow your rival \$10 a car."

Mr. ADAMSON. Mr. Chairman, if you will permit me to make a suggestion to the witness, I think we can arrive at a way to do that. Of course, there may be different ranges of cost.

The CHAIRMAN. I would be glad to know how it could be done. It is bothering me.

Mr. ADAMSON. There are in different localities and even at different mills a different range of prices, but each mill operating for itself would have a man to have that car loaded. He knows just about how much an hour he pays his men. He knows just about how much per hundred or per thousand feet is worth there that he puts in the car. What is to hinder him from simply making in each case an accurate count of so many feet of lumber, of such a grade, of such price, so many hours of labor of so many men in staking that car, swear to it, and furnish it to the local agent or to the carrier at that place?

Mr. PRICE. There is nothing whatever to prevent that.

Mr. ADAMSON. Then, if the agent wants to dispute it, there is a way to settle the question of accuracy or veracity between them. There is absolutely no trouble between them on earth, if they just pursue that plan, and there is certainly no chance in that to accuse the railroad of making a rebate.

The CHAIRMAN. You are not allowed, under the law, even to sell lumber to a railroad company and take it out of the freight rates.

Mr. ADAMSON. Well, we are running the factory that made that law, and we can alter it.

The CHAIRMAN. It is alleged that even under the power to make claims by shippers for damage to freight in transit that has been used in such a way, and doubtless it is true, as to effectively grant rebates.

Mr. ESCH. Now that it seems to be conceded that the commission has the power to regulate this matter under existing law as interpreted, would it be possible for the Interstate Commerce Commission, after a full hearing, to determine what would be the reasonable cost of staking lumber, for instance, in a given region or along a certain system of railroad?

Mr. PRICE. I presume they could arrive at that very readily by proper evidence from manufacturers in the different localities.

Mr. ESCH. All interests having been heard first.

Mr. PRICE. Yes, sir.

Mr. ESCH. And then determine what would be a reasonable charge in that section of the country, as, for instance, Louisiana and the Gulf coast?

Mr. PRICE. Yes, sir.

Mr. ESCH. Do you think the cost of staking to the manufacturer of lumber in that section would vary very much as between the different mills or in the different States?

Mr. PRICE. I do not think it would, in the same class of timber. You take yellow-pine timber. The cost of staking would be practically the same in all localities. In cypress it would be practically the same and in oak the same.

Mr. ESCH. Would that be true, for instance, of the staking of the mills in Wisconsin, Michigan, and Minnesota?

Mr. PRICE. That would be on the basis of the value of the class of timber that was used.

Mr. ESCH. Then the commission, by these separate hearings, according to the different regions, would determine what was a reasonable rate to be charged or a reasonable cost to be paid?

Mr. PRICE. They could easily do that, it seems to me.

Mr. ESCH. Do you think that would satisfy the conditions?

Mr. PRICE. Yes; I think it would.

The CHAIRMAN. That would be to make the flat rate in different localities of the country?

Mr. PRICE. Yes.

Mr. ESCH. As they do on other freight hauled by carriers?

Mr. PRICE. Take it with us in Louisiana. During the movement of sugar cane there are a great many hundreds of cars put in that service. It is only for a few months. It is for about two or three months, and the railroad companies crate those cars for the sugar growers at their own expense.

Mr. SIMS. Without any additional freight charge?

Mr. PRICE. Well, they have their regular rates, I suppose, for conveying the sugar cane from the different sugar houses.

Mr. SIMS. Does not that special equipment become the basis or part of the basis on which the rate is made?

Mr. PRICE. They take the flat cars and rack those cars for the sugar-cane growers.

Mr. SIMS. And make no additional charge to the rate to recoup themselves?

Mr. PRICE. That is not interstate commerce, mind you. It is just simply from the local points to the different sugar houses, but it is

done by the railroad company. Of course, I do not know what rates of freight they charge.

The CHAIRMAN. The distinction between that case and your case is thoroughly broad. If it were practicable to require the railroad companies to furnish equipment complete for you so that it required no further services, I should say it would be the duty of the railroad company to do that; but you have found by long experience that it is not practicable for railroad companies themselves to stake the cars under the present conditions, to furnish the services, and if they did do it, it would cost a great deal more than it costs you to do it, and you in the end would have to pay for it.

Mr. PRICE. They could furnish us the material. I do not say it would be practicable for them—

The CHAIRMAN. They would have to buy the material from you on the ground, because as a rule you can furnish it cheaper than anybody else.

Mr. PRICE. Yes, sir.

The CHAIRMAN. They would pay you a high price for it, and then you would have to pay it back in some other way. Now, in the case of the men who bring the cane to the railroad, they have no method of furnishing the equipment, nor does the railroad company perform any services in connection with the loading of the cane.

Mr. PRICE. No; but this is imposed upon the lumber men simply because they have the facilities for furnishing the equipment. If we were furnishing something that we could not stake a car with, that would be a different proposition.

The CHAIRMAN. Suppose we should pass a law forbidding you to furnish any car stakes or any services in connection with car stakes?

Mr. PRICE. I guess the railroad companies then would furnish them, because they are right after the business.

The CHAIRMAN. Do you think you would be satisfied?

Mr. PRICE. I think we would; yes, sir.

The CHAIRMAN. Forbidding you to do it at all?

Mr. PRICE. Forbidding us to do it at all. I venture to say the railroad company would be right after our business.

The CHAIRMAN. No doubt they would be after the business and I have no doubt they would get it. The question is whether in the end it would not cost everybody a great deal more than it does now.

Mr. PRICE. Well, I question that.

The CHAIRMAN. I do not suppose they would stop carrying lumber on that account at all.

Mr. PRICE. You take an up-to-date sawmill at the present time, and while we have a few isolated cases of small mills in the country that do not work up everything, the large majority of the mills that are up-to-date at the present time do not allow practically anything to go to waste.

The CHAIRMAN. Are you referring now especially to the Eastern States?

Mr. PRICE. No, sir; I am referring to the Southern States as well. Take it in cypress. There is a demand for every piece of lumber that is 4 inches wide and 12 inches long, and from that up. It would surprise you to know the amount of lumber that is used in the manufacture of churns and washing machines.

Mr. ADAMSON. You are not going to leave any forests to fuss about at all.

Mr. PRICE. There is hardly anything left, and when you talk about going around a cypress mill and finding anything there big enough for a car stake, it is simply because that man is not up to date.

Mr. ADAMSON. Maybe the objection of the railroad company to moving forest products is a patriotic effort to aid the conservation movement.

Mr. PRICE. It may be that way also.

Now, in regard to this temporary stake proposition, if you will go back over the evidence produced here, you will find that it is wholly confined, or almost wholly confined, to a shipment of a carload of telephone poles. It might be very difficult to get a stake that will submit to all kinds of uses. There is reason in all things, and it is not to be supposed that you can take a big log and drop it down onto an ordinary stake and not have it bend or break.

I make the assertion right here now that there has not been a Harvey stake used on a car where the shipments of inch lumber—or not alone inch lumber, but lumber 2 or 3 inches thick—have been shipped on that car where that stake has been damaged.

Mr. KENNEDY. That is the stake that is made out of angle iron, is it, or is it steel?

Mr. PRICE. I believe it is steel.

Mr. KENNEDY. Now, that dropped down on the side of a car must be a very dangerous thing. The men have to go around. Suppose it gets a little bent and is 6 inches out from the side of the car?

Mr. PRICE. Of course if it is bent out it is dangerous. So is anything.

Mr. KENNEDY. The cars are made just to clear, and the men working between those cars, when the cars are going into the sidings, do not see the little stakes sticking out 6 inches.

Mr. PRICE. That is very true. It is dangerous.

Mr. KENNEDY. It occurs to me that those things would be the source of infinite trouble and a great many accidents.

Mr. PRICE. It is the same with the car-stake proposition as it is with almost any other invention.

Mr. KENNEDY. With the stakes standing upright all the time and rigid in place all the time, it would make your cars almost impossible of loading for any other purpose.

Mr. PRICE. What I was going to state was this: Almost any proposition of this kind takes time. There are men who always come to the front with their ideas to solve the problem. When the question of air brakes came up and the railroads were required to equip their cars for the protection of their men, they fought that proposition just as they are fighting this at the present time. Finally, they were compelled to put on the air brakes to protect their men from being killed.

I have a car stake with me at the present time that has never been shown to any of these gentlemen. It has been submitted to a good many of the lumbermen. It is something that I am not interested in in any way, shape, or form, but a man who is interested in it requested me to bring up the model. I spoke to the chairman about

bringing it here before the committee, and he did not think it advisable. So I have not presented it.

I merely speak of this to show you that men are giving this their attention, and we believe from the workings of this stake, though it has not been tested and it might not fill the bill, that it would be practicable for the shipment of lumber. It is a stake that does not pull down on the side.

Mr. SIMS. If the shippers in fact can furnish the wooden stakes cheaper than the railroad companies could buy and furnish them, if wooden stakes are to be continued in use, is it not for the benefit of the ultimate consumer, the general public, who uses lumber, to maintain present conditions rather than put it on the railroad and have to pay more for the lumber?

Mr. PRICE. Of course if they can maintain the present conditions and have the shipper stand all the expense of that, it is better for the public.

Mr. SIMS. In fact, does the shipper stand any expense?

Mr. PRICE. They stand it all, every dollar of it.

Mr. SIMS. Do you not charge a price for your lumber that covers all expenses?

Mr. PRICE. Not one cent's worth.

Mr. SIMS. Why not charge that as well as freight?

Mr. PRICE. To whom, the shipper?

Mr. SIMS. To the purchaser of the lumber.

Mr. PRICE. They would laugh at you.

Mr. SIMS. Why not charge that as well as the cost of sawing the lumber?

Mr. PRICE. We do not charge any of the cost of sawing. That goes into the expense of the manufacture of lumber.

Mr. SIMS. Why is the car stake not an element of legitimate expense, the same as any other?

Mr. PRICE. It is an element of expense to us, but for us to attempt to charge the retailer, the purchaser of that lumber, with that car stake, they would simply laugh at you.

Mr. SIMS. I do not mean to put it in a separate item, but in invoicing your entire expenses, why is not that as much a part of your expense as any other expense incurred?

Mr. PRICE. Because we get orders for lumber that are taken upon a certain price. We order cars for the shipment of that lumber. Now, how do we know whether we are going to get a box car or whether we are going to get a gondola car? The price is made to the purchaser of that lumber, and it is based supposedly upon the price of a box-car shipment.

Mr. SIMS. Without stakes?

Mr. PRICE. Without stakes.

The CHAIRMAN. You would not expect to sell lumber any cheaper because of this?

Mr. PRICE. No, sir.

Mr. SIMS. If the railroad companies do have to furnish the wooden stakes at a higher average cost to them and to you, would they not have to add it to the freight rate and make the consumer pay it?

Mr. PRICE. They threaten to do that. They might take that into consideration in making their rates.

Mr. SIMS. The general public is what I am thinking of, and the effect it will have on them. That is what I am trying to get at.

Mr. PRICE. They might possibly add something to that.

Mr. SIMS. That is just what we would like to know from practical men like yourself.

Mr. PRICE. It might enter into the question of rates.

Mr. SIMS. On account of the operations of the lumber business it may be that it is not proper for you to include it as an item of expense.

Mr. PRICE. No; we do not enter it on our books.

Mr. CALDER. After all, the consumer pays for all these things, does he not?

Mr. PRICE. No, sir; there is no charge to the consumer. If the retail men get these stakes and sell them and get something out of them, they are that much ahead.

Mr. CALDER. In the expense of conducting your business you consider all these things, do you not?

Mr. PRICE. No, sir; we do not consider car stakes.

Mr. CALDER. It is part of the cost of conducting your business.

Mr. PRICE. That is all right.

Mr. CALDER. It must enter into the conduct of your business, it seems to me.

Mr. PRICE. I venture to say that there is not a manufacturer of lumber who has a car-stake account. It has always been a part of the expense. It is not considered, not figured out. It reduces our cut that much, it is true, but we do not consider it in the formulation of a price list.

Mr. SIMS. It is a net loss to you as at present operated?

Mr. PRICE. Yes, sir.

Mr. NEALE. Perhaps the expense is so small that it may not be worth while to consider it.

Mr. PRICE. Well, that is an idea.

The CHAIRMAN. Is that all, Mr. Price?

Mr. PRICE. That is all.

Mr. BATES. Mr. Price, you made reference to the fact that somebody had misrepresented something here with regard to 95 per cent of the industries being located away from the center.

Mr. PRICE. I understood you to make that statement.

Mr. BATES. I made the statement that 95 per cent of the carload traffic was loaded away from our terminal. I did not say lumber. All of the iron and limestone is loaded away out from our stations. I did not mean lumber. If you got that impression from me, I want to correct it. I meant 95 per cent of the total carload business is loaded away from the terminal.

Mr. PRICE. Loaded at the factory?

Mr. BATES. Yes.

Mr. PRICE. Well, so is lumber.

STATEMENT OF LEONARD BRONSON, REPRESENTING THE LUMBER INTERESTS, CHICAGO, ILL.

Mr. BRONSON. Mr. Chairman, I wish to just clear up our situation a little bit along these lines. The fundamental contention rests in the contention as to whether the car stakes and binder propositions for the lumber business is a part of the loading or a part of the trans-

portation. We hold that it is a part of the transportation. We do not admit that analogy between a piece of machinery or a vehicle that requires blocking and a solid carload of stuff the covering for which is the car itself and its appurtenances.

The CHAIRMAN. You do not stand for that part of the bill, then? The bill covers all that subject.

Mr. BRONSON. Well, we do not know much about the rest of that bill. We only know about it as far as lumber is concerned. We do not want to say anything about that. We can not say anything about it. These gentlemen can defeat the bill on that if it does not provide reasonable conditions, of course.

The CHAIRMAN. The form of the bill does not cut any figure.

Mr. BRONSON. We stand for lumber only, and I wish to call your particular attention to this further point, that if it be a part of the transportation, as we contend, then that should be covered into the published rate or the published allowances and charges, as to how this cost shall be provided for. We are not insisting upon any particular form, but it all must come into the published charges, which are under the control of the Interstate Commerce Commission in some way or other.

Mr. Chairman, I would not agree with your statement that that would be a rebate if there were a flat price of, say, \$3.50. If it were an Interstate Commerce Commission ruling, then it would be an open thing to all, but, of course, somebody would have an advantage over others by reason of location.

The CHAIRMAN. Wait a moment. Suppose there is a flat rate of \$3.50. The market prices of lumber and the competition between different lumber-producing sections are now fixed upon the basis of the lumber shipper furnishing the car stakes. I assume that the average price is \$3.50, and that a flat rate was fixed of that sort. Here is a man whose cost now to furnish the car stakes is 50 cents. That would require the railroad company to pay him \$3 in cash on each car. Would not that amount in fact to a rebate to him?

Mr. BRONSON. Perhaps I do not understand what the word "rebate" means. I have been accustomed to consider a rebate as a hidden, illegal, unknown thing which constitutes to some people an advantage which is unknown to others. In this case, if it were an allowance made and published by the Interstate Commerce Commission, whatever it might be, whether it was uniform in the United States or uniform in certain sections, at the best it would be but an attempt at an average.

The CHAIRMAN. But it would give one man a preference in the freight rate of \$3 per car, perhaps, over another man, to whom it would cost \$3.50, or a difference of more than \$3 a car if it cost the other man more than \$3.50 a car.

Mr. BRONSON. That would be a preference due to his own abilities and special natural facilities. It would not be an artificial preference.

Mr. ADAMSON. Why can he not make a differential in his published rate of a lower rate of so much if the shipper has to furnish the stakes and stake it up?

Mr. BRONSON. The railroad people and my association, I think, or certainly myself, agree on that point, that we want to have one rate.

The CHAIRMAN. Take this case. Take a Chicago firm. They get their car stakes for nothing, do they not?

Mr. BRONSON. Some of them. Some, perhaps, get all of them for nothing. They receive a great deal more than they send out.

The CHAIRMAN. They practically get their car stakes for nothing. Now, if they are given an allowance of \$3.50 for car stakes that cost them nothing and for services which do not cost them over 50 cents, do you think it would be quite fair to the man with whom they are competing, who is in the country at a sawmill, perhaps, and who has to furnish his car stakes, to give him \$3.50 a car?

Mr. BRONSON. There is no doubt that there is a question in there, Mr. Chairman, but I am perfectly willing to leave all of that to the Interstate Commerce Commission. What I want is to get this thing all published, all fixed, and not have this outside element of course of doing railroad work, a thing which belongs to the railroad, to be paid for by them in some way or other. I do not want to have that left open. I want that to come inside the rate or the published charges. It seems to me to be fair.

The CHAIRMAN. If there is any way of doing it, it certainly is fair.

Without objection, the committee will stand adjourned until tomorrow morning at 10 o'clock.

(The committee, at 4.35 p. m., adjourned until Friday, January 28, 1910, at 10 o'clock a. m.)

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HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
OF THE HOUSE OF REPRESENTATIVES

ON BILLS AFFECTING

INTERSTATE COMMERCE

PART IV

WASHINGTON
GOVERNMENT PRINTING OFFICE
1910

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES.

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WILLIAM C. ADAMSON, GEORGIA.
WILLIAM RICHARDSON, ALABAMA.
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THELUS W. SIMS, TENNESSEE.
ANDREW J. PETERS, MASSACHUSETTS.

BILLS AFFECTING INTERSTATE COMMERCE.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Washington, D. C., January 28, 1910.

The committee met at 10 o'clock a. m., Hon. James R. Mann in the chair.

Mr. FAULKNER. Mr. Chairman, we would like, if it is agreeable to the committee, to take up the extension of the ash-pan bill. We only have one witness to call attention to the necessity for the passage of that bill.

The CHAIRMAN. Very well.

STATEMENT OF CHARLES A. SELEY, MECHANICAL ENGINEER, ROCK ISLAND RAILROAD COMPANY.

Mr. SELEY. Mr. Chairman, we would be very greatly in favor of the passage of the bill calling for an extension of time for the application of ash pans, for the reason that, so far as the Rock Island road is concerned, it is a road of a very considerable number of ramifications, extending from Minnesota to Texas, and through Arkansas, Louisiana, and other intervening States. There are a number of smaller engines at out-lying points that we had great difficulty in getting to the shops to get an ash pan applied which would fully comply with the law. I understand the same is the case with a number of other railroads in our territory, and possibly some in the East. I can name others if it is necessary, but we would like very much to have the extension of the time considered favorably by the committee.

Mr. TOWNSEND. What have you done to comply with the law?

Mr. SELEY. The most of the modern engines have already complied with the law. Those having fire boxes on or above the frames necessitated a type of ash pan which was already conformed or could be readily conformed to a self-dumping feature. Our main difficulty was with the old types, with deep fire boxes and shallow ash pans, for which there has never been any really satisfactory device brought to our attention or that we would like to experiment with. What the Rock Island has done is to put in a blowing-out arrangement, to blow the ashes and clinkers out of the pan with steam and water.

Mr. TOWNSEND. Without the necessity of a man going underneath?

Mr. SELEY. Without the necessity of a man going underneath.

Mr. TOWNSEND. How many engines does the Rock Island system have?

Mr. SELEY. Something over 1,500.

Mr. TOWNSEND. How many of them are equipped now?

Mr. SELEY. Between 80 and 90 per cent. I can not state the exact number.

Mr. TOWNSEND. You are still at the business of equipping?

Mr. SELEY. Yes, sir; actively.

Mr. TOWNSEND. And you have been, ever since the law was passed?

Mr. SELEY. Yes, sir.

The CHAIRMAN. Have you used all the diligence that was practicable to have these other engines or all of your engines equipped?

Mr. SELEY. We have. The trouble has been largely, as I said, the difficulty of moving some of these engines from outlying points, and to get the proper labor and work started at the points to do the work. There is no question but that at our larger shops and important points where we can get at those things the work is done very much more readily.

The CHAIRMAN. If Congress should extend the time or authorize the commission to extend the time until the 1st of July next, do you think all the engines in the country would be equipped at that time, or would we then have further application for additional time?

Mr. SELEY. I can only state, so far as our own case is concerned, that I think we would be fully equipped within that time.

The CHAIRMAN. How much sooner could you fully equip all of your engines?

Mr. SELEY. That would be a very difficult matter to closely define, Mr. Chairman. We do not believe that there is a great difficulty in complying within the six months. We would like to have that extension if it could be considered.

The CHAIRMAN. Have any prosecutions been commenced against the Rock Island?

Mr. SELEY. Not that I have any knowledge of.

The CHAIRMAN. Do you know whether the Interstate Commerce Commission has threatened to prosecute any of these roads that were apparently using due diligence to equip their engines?

Mr. SELEY. I have no information about that.

Mr. TOWNSEND. Have you had any complaints? Has anybody complained, to your knowledge, at the fact that you have not complied with the law?

Mr. SELEY. Not to my knowledge.

Mr. RICHARDSON. Have you suggested what length of time you wanted it extended?

Mr. SELEY. The bill calls for six months, I believe.

Mr. RICHARDSON. You say you have between 80 and 90 per cent equipped now on your road of the engines?

Mr. SELEY. All but a few of the old engines, sir, at the outlying points.

The CHAIRMAN. How many have you equipped since the passage of the act?

Mr. SELEY. I can not give those figures, for the reason that I have made no compilation of the engines which complied with the law before the law was passed. As I stated at the outset, a large number of our engines were already equipped with pans which fully complied with the law.

The CHAIRMAN. Do you not think we should have information which shows whether you complied with the law during this time or not? You do not tell us whether you have equipped any engines.

Mr. SELEY. I know that we have equipped a very large number.

The CHAIRMAN. Have you any idea as to the number that you have equipped since the passage of the act?

Mr. SELEY. As I recall the matter, I think about 40 per cent of our equipment already complied with the law since its enactment, and since that time we have increased the percentage of equipped engines up to somewhere around 90 per cent, if my recollection of the figures is correct.

The CHAIRMAN. Are you rapidly equipping engines now?

Mr. SELEY. We are. All of the shops on the system have been supplied with prints and instructions and orders to get this thing all done by the 1st of January, within the time limit of the law; but some of the shops have been unable to comply on account of the pressure of work or lack of men, one reason or another. We have used all possible diligence in trying to comply with the terms of the law.

The CHAIRMAN. It is owing partly to the lack of capacity and the crowded work in the shops, and partly to the inability to get engines to the shops.

Mr. SELEY. Yes, sir; and the lack of men at some of these outlying points to keep up the work of the railroad.

Mr. ESCH. Is there a general form of ash pan being used throughout the country?

Mr. SELEY. No, sir.

Mr. ESCH. Or are there several different devices that are practical?

Mr. SELEY. There are quite a number of devices.

Mr. ESCH. All of them, of course, conform to the requirements of the law?

Mr. SELEY. The general requirement of the law, as I understand it, is that a man shall not go underneath the engine to get the ashes out. If that is complied with, it does not matter what the appliance may be that is provided.

Mr. TOWNSEND. You speak for several companies, do you?

Mr. SELEY. I speak for the Rock Island, and the representative of the Milwaukee Railroad last night told me the same thing. This morning the representative of the Illinois Central said that they still have some engines that are not equipped. Those are representative railroads. I believe there are some in the East.

Mr. TOWNSEND. But, generally, have they been complying with the law?

Mr. SELEY. Oh, there is no doubt of it, sir.

Mr. TOWNSEND. Do you know of any case where they have not?

Mr. SELEY. I know of no case where there has been no endeavor to comply with the law.

The CHAIRMAN. All you want is to escape prosecution before the 1st of July?

Mr. SELEY. That is what we desire, sir. We have done our best, and we have not been able fully to equip the engines.

Mr. ESCH. During the severe weather and heavy snows I noticed that a great many engines have, as they say, gone dead. Is that due to the application of the ash pan?

Mr. SELEY. The ash pan has a good deal to do with our winter troubles, on account of getting frozen up and picking up snow and ice and things of that kind. It is, of course, down low, close to the tracks, and it is the cause of many delays not only on the road, but at our roundhouses and ash-pan cleaning pits, where it takes time to thaw out these pans and get the snow and ice out and get them in proper shape for a fresh start.

Mr. PAULDING. Mr. Chairman, Mr. Townsend and the chairman asked Mr. Seley the question whether the railroads have been generally trying to comply with this law. I may say, of my knowledge, that during the latter part of last year and the early part of last year

I made personal investigations, while I was preparing to ask this committee for an extension of the time on behalf of our line, and I was informed by every railroad with which I communicated, and that was every large railroad in the country, that they were making their best efforts to comply with the law and to be equipped in time, although a number of them said they would be unable to equip in time on account of the number of engines to be equipped.

The CHAIRMAN. Mr. Paulding, have you talked with the members of the Interstate Commerce Commission in reference to this matter?

Mr. PAULDING. I did not, sir; because we were equipped by the 1st of January.

The CHAIRMAN. You probably would not have been if we had let the law stay the way it was.

Mr. PAULDING. We were using our best efforts, and probably would have been, Mr. Mann. I take issue with you there.

The CHAIRMAN. I only know from what you told me. You told me early in December that you could not be.

Mr. PAULDING. We were preparing for eventualities in the way of a breakdown in the shops, or bad weather, or something of that sort, that would compel us to use engines that would not comply with the law. We were using our best efforts, and we hoped to be equipped.

Mr. HUBBARD. Mr. Paulding, do you know what percentage are still without the required equipment?

Mr. PAULDING. It is a very small percentage. Do you mean throughout the country?

Mr. HUBBARD. Yes.

Mr. PAULDING. It is a very small percentage, and was in December.

Mr. HUBBARD. What do you mean by that? Of course I could not expect you to be accurate.

Mr. PAULDING. I should say, from reports I have at that time, about 15 per cent.

Mr. HUBBARD. Fifteen per cent not equipped?

Mr. PAULDING. Yes, sir.

Mr. HUBBARD. Do you use one or more forms of ash pan on the New York Central?

Mr. PAULDING. That depends on the type of the engine.

Mr. ESCH. Do you find them all to be practical?

Mr. PAULDING. Mr. Smith can tell you more about that than I can. In the winter time, however, I am told there is a great deal of trouble with ice and snow.

Mr. TOWNSEND. That existed before.

Mr. PAULDING. That existed before, but there is more trouble now. Of course our lines have been entirely equipped with cellars, or ash pan pits, where there is no danger to the men if they have to haul out the pans. So we had no accidents, practically, from men going under the cars at any time.

Mr. FAULKNER. Mr. Chairman, I do not know whether any of these other gentlemen desire to address you. If they do not, I desire to submit to the committee the request that we now consider the pass amendment for a few minutes. Mr. Harrison is here and has to leave for New York to-day. He wants to submit a simple proposition to the committee in reference to those pass amendments, not to go into it generally.

The CHAIRMAN. It is immaterial to the committee what order you take.

STATEMENT OF T. B. HARRISON, COUNSEL FOR THE ADAMS EXPRESS COMPANY AND THE AMERICAN EXPRESS COMPANY.

Mr. HARRISON. May it please the chairman and gentlemen of the committee, what I wanted to suggest was in a suggestive sort of way. As the committee knows, at the time the Hepburn Act was passed, in the last days of the session, without making the act fit in any other particular, there was interpolated in the act the language "that the term 'common carriers' used in the act shall include express companies and sleeping car companies."

The general impression was that the pass provision of the act which authorized common carriers to exchange passes, in the spirit if not in the letter, authorized the express companies to issue franks for the transportation of personal packages of their own employees and to exchange those franks with railroad companies over whose lines they did business, and with other express companies.

The CHAIRMAN. Do you appear for the express companies?

Mr. HARRISON. Yes, sir.

The CHAIRMAN. What express company?

Mr. HARRISON. I appear for them all in this matter.

The CHAIRMAN. Which one are you connected with?

Mr. HARRISON. I am connected personally with the Adams and the American Express companies.

The CHAIRMAN. In what capacity?

Mr. HARRISON. In the capacity of an attorney.

The CHAIRMAN. Here in the city?

Mr. HARRISON. In New York, sir; at their general offices.

In a test case which came up after some consultation with the Department of Justice and with the Interstate Commerce Commission, which was tried in Chicago, the court held that as those pass provisions of the act referred entirely to the transportation of passengers the express companies were not included, and the Supreme Court, in sustaining that judgment of the circuit court at Chicago, held the same thing.

Mr. ESCH. Have you that citation?

Mr. HARRISON. I have really forgotten the number, sir. It is about 208 United States. It is the case of United States against American Express Company. I will hand the citation to the clerk, if you wish.

The argument was made, of course, that the express companies were within the spirit of the law and that, being put under the law, they should have any advantages that came from the pass provisions for their employees. The Supreme Court said there seemed to be no apparent reason why that should not be done, but that Congress was the sole judge, of course, and that Congress had not seen fit to make the language clear and explicit enough to include that.

The CHAIRMAN. It made it clear and explicit enough not to include it, you mean?

Mr. HARRISON. The court so decided; yes, sir; and we did not know whether that was intentional, or not.

The CHAIRMAN. We do not give the railroads the right to transport free the goods of their employees.

Mr. RICHARDSON. I do not think that feature of it was ever discussed.

Mr. HARRISON. I do not think it was ever discussed. I think the express end of it was discussed very little either in the committee or on the floor of Congress, and this interpolation was probably put in by amendment at a very late day without any changes being made in the law to fit the peculiar differences between the express companies and the railroad companies.

The CHAIRMAN. What are those peculiar differences? The matter was discussed enough for everybody to know what it meant.

Mr. HARRISON. Of course it was discussed enough to know that it meant to bring the express companies under the operation of the law, and there is no objection to that; but the pass amendment was, I believe, though I am not familiar with that, put in before the express companies were put in the act, and I have always supposed that no attention was called to the particular language of the pass amendment with reference to express companies, and that there was no absolute intention of Congress to decline to permit the express company to carry the personal packages especially of their own employees.

Mr. RICHARDSON. My recollection is that the express companies were about the last things that were put into that bill, as a common carrier.

Mr. HARRISON. I think so.

Now, not to take up the time of the committee, the Interstate Commerce Commission has held that a contract between the express companies and the railroad companies for the transportation of their officers and employees traveling upon express business over the line of the contracting company were valid, and that that kind of transportation is not included in the act and no rate schedules have to be filed to cover it. They have held, however, that where what is known as off-the-line transportation is provided for in the contract, those provisions in the contract are not valid, and the commission has asked the express companies to file all of their contracts, which has been done.

We have drawn up a bill that we thought covered the case, and it has been introduced in the Senate by Senator Elkins. We wanted to call the attention of this committee to that, and I have a copy of it with the changes shown by underscoring.

Mr. RICHARDSON. What is the number of the bill?

Mr. HARRISON. 5107.

The CHAIRMAN. What reason is there why the express companies should have the privilege to do something which the railroad companies have not the privilege to do?

Mr. HARRISON. The Interstate Commerce Commission have held that in some cases the railroads have the right to transport the personal property of their employees when they are traveling on business of the railroad or when they are moving from place to place. I do not know that I can give you any specially strong reason why a carrier should have the right to transport its employees free when they are not traveling on its business, or to transport their property. The express company can not transport the employee. It has been in the habit, from the beginning, of carrying their personal packages, as the railroads have been in the habit from the beginning of carrying the person.

The CHAIRMAN. But the railroad company carries your employees free.

Mr. HARRISON. Yes, sir.

The CHAIRMAN. You can get a pass from the railroad for your employees?

Mr. HARRISON. Yes. We can not make any reciprocal return, though.

The CHAIRMAN. Is that the reason, that you want to influence the railroad officials by giving them free express privileges?

Mr. HARRISON. No; this is more peculiarly in the interest of the employees than it is of anybody else. The railroad man can travel. Neither the railroad people nor the express people who do the actual work get any excess salaries or wages. The express people and the railroad people are practically one, so far as the public is concerned. The railroad man can get passes for his brother or his cousin or his family. The express man can not. The express people have always been in the habit of giving these franks to their employees, or giving stamps so that an express man who lives in Washington and has a brother or a cousin or somebody he knows in a town down in Virginia can have this relative or friend buy his stuff for him down there much cheaper than he can buy it in Washington, and he gets the benefit of that by the company being willing to transport the merchandise.

The CHAIRMAN. And the railroad official may have somebody down there, and you want to be able to give the railroad official an express frank, so that he can have the benefit of this?

Mr. HARRISON. Yes, sir.

The CHAIRMAN. Somebody has to pay that expense, of course?

Mr. HARRISON. Well, I do not think it is an expense.

The CHAIRMAN. It does not cost anything to carry it? We who pay express charges find it costs a good deal.

Mr. HARRISON. That is true, but you will find that a great deal of this so-called "free business," if it is not free, does not move.

The CHAIRMAN. That is very well, but you must assume that when a thing is carried it costs something.

Mr. HARRISON. Yes, sir.

The CHAIRMAN. You want to be able to carry these express packages for these railroad officials free, and have the expense paid by us poor people, who have to pay for our express packages. Is that a fair proposition?

Mr. HARRISON. Well, putting it in that extreme way, I do not say that it is a fair proposition; but I think that is an extreme statement.

The CHAIRMAN. We would not permit the railroad companies to carry freight free for the express companies.

Mr. HARRISON. What is the difference, Mr. Chairman, between your permitting an express company, who can not carry a passenger, to carry a package for its employee or for the railroad company and permitting the railroad company to carry a passenger for some other railroad?

The CHAIRMAN. I can see there is a difference as great as the difference between a mountain and a molehill, but if you can not see it, all right.

Mr. HARRISON. That is a difficulty of mine that I would like to be enlightened about, if it is proper to ask that question.

Mr. TOWNSEND. I would like to ask you to what extent the Interstate Commerce Commission has attempted to regulate the affairs of express companies under the interstate commerce law?

Mr. HARRISON. I think to the same extent that they have regulated the railroads, except, of course, that as to the railroads they have been longer at it and it has not gone to the same thoroughness with the express companies as with the railroad companies.

Mr. TOWNSEND. Have they fixed your rates at any time and determined those matters?

Mr. HARRISON. They have, in the case of complaints.

Mr. TOWNSEND. What case?

Mr. HARRISON. The leading case in which they fixed any rates was the case of *Kindel v. Express Company*.

The CHAIRMAN. What did that involve?

Mr. HARRISON. That involves the rates particularly between the Missouri River and Denver, but it involves the whole general question. The commission, in quite a long and quite a well-written opinion by Commissioner Prouty, went into the whole general question, the underlying principles of the fixing of an express rate and of the express business.

Mr. TOWNSEND. What order did they make in that case?

Mr. HARRISON. They made an order reducing the rates.

Mr. RICHARDSON. Have you any way of communicating your express charges to the public?

Mr. HARRISON. Yes, sir.

Mr. RICHARDSON. How do you do it?

Mr. HARRISON. We do it by filing the rates as required by the act, modified to some extent by the commission.

Mr. RICHARDSON. Do you put them up anywhere?

Mr. HARRISON. They are required to be at each office, with a notice that is up or ought to be up at each office, containing the information that they are in charge of the agent and that the agent will be glad to show the charges and explain them to any person inquiring. The Interstate Commerce Commission has issued a bulletin as to how that shall be done and as to what shall be done. They have also got up a system of accounts for express companies.

Mr. STAFFORD. Is that the only instance where complaint has been made to the Interstate Commerce Commission of the charges of the express companies being unreasonable?

Mr. HARRISON. No, sir; there are other cases that have been decided by the commission, and there are a good many pending now. We took some testimony in one the other day.

Mr. ESCH. Have complaints been brought against the express companies for dealing in the commodities they transport?

Mr. HARRISON. There was a case up, not for dealing in the commodities they transport, but for engaging in what is known as the "order and commission business." That was referred to the Interstate Commerce Commission by the Senate committee, I believe—it was either the House committee or the Senate committee—for investigation, and quite a thorough investigation was made by the commission. The commission reached the conclusion that their dealing in the order and commission business was a great help to the small producer of fruits and vegetables, and recommended that they be allowed to continue, but recommended that neither the express company nor the agent of the express company should be the actual dealer; that it should be done, as most of them do, I think as all the express companies do, purely as an order and commission business. That is a printed report, I think, of the Senate committee.

The CHAIRMAN. The proposition which you have in regard to passes, does that contemplate the permission to give a pass to railroad officials to transport express packages over that particular line free, or over the lines of the express company, wherever they may go?

Mr. HARRISON. I think this bill, as it was drawn and introduced in the Senate, Mr. Chairman, is a little broader than that. Frankly, just in a word, we feel that we should have the privilege of issuing and exchanging franks with the railroads and of issuing them to our own employees for the carrying of their personal packages, not for any commercial transportation. We may not have used or suggested apt language for that. We do not care how much that is curtailed by the committee if it sees fit to give us that privilege.

The CHAIRMAN. I do not care about that. I am trying to find out what your suggestion is. How far does the Adams Express Company—which other do you represent?

Mr. HARRISON. The Adams and the American.

The CHAIRMAN. How far does the Adams Express Company reach?

Mr. HARRISON. It reaches west to Denver, as the farthest place, I believe—no, it reaches another line to Billings, Mont.

The CHAIRMAN. I judge, then, from your statement, that you want authority to issue to any railroad official over whose line the Adams Express Company runs, a pass which will authorize the transportation of personal packages between that point and New York City?

Mr. HARRISON. Yes, sir; if occasion should arise, just like now the road that reaches there can carry the wife or the daughter or the member of the family.

The CHAIRMAN. You want to put freight on the same basis as persons so far as the express business is concerned?

Mr. HARRISON. No, sir; with this exception, and we tried to cover that—that must be the personal package and for the personal use and consumption of the person for whom it is transported.

The CHAIRMAN. Of course you have no way of knowing that?

Mr. HARRISON. No, sir.

The CHAIRMAN. We have all had express packages and we all know that is absolutely a figure of speech.

Mr. HARRISON. No; we have no way of knowing that. We do not care how that is guarded, if it can be guarded.

Mr. TOWNSEND. Do you observe the law now, or do you conclude the law applies to you, prohibiting the use of franks?

Mr. HARRISON. Yes, sir. There is not an express man in America to-day who has a frank good for transportation.

Mr. TOWNSEND. That is, an express frank, you mean?

Mr. HARRISON. Yes, sir. There is not one.

Mr. KNOWLAND. That is, an employee of the express company can not frank his own stuff?

Mr. HARRISON. No, sir; it is not done at all. Of course after the Supreme Court decided that case that ended the matter.

I did not intend to take up any of the time of the committee, except just to make this in a suggestive sort of way. We find that it is a considerable hardship on a good many of our employees, and they do not understand the reason why they can not get what they have had all their lives. We do not think it is any more to the public detriment than the issue of passes for personal transportation by the railroads.'

The CHAIRMAN. How much would that be worth, on the average, to your employees?

Mr. HARRISON. I think it would be a very small amount, sir. I can speak for myself, personally. I have had an express frank myself until the Supreme Court decision in that case, and I doubt if I ever sent as much as \$5 worth in one year.

The CHAIRMAN. You can easily cover all that, then, by a sliding increase in salaries, so far as the employees of the express company are concerned. How much would it be worth to the express companies to permit railroad officials to transport express packages over the lines of the express companies?

Mr. HARRISON. I do not know that it would be worth anything, sir.

The CHAIRMAN. You have nothing to gain, if it would not be worth anything.

Mr. HARRISON. Except for this. It is worth a good deal to our employees, when their families want to visit, to get railroad passes. We feel, with absolute frankness to the committee, that while the Interstate Commerce Commission has ruled that even under the present state of the law any railroad company can give complimentary passes to any express-company employees and their families, and they do it to a great extent, our people are embarrassed in asking those favors unless we can return them in some manner.

The CHAIRMAN. The way I get the point now, the reason you want to be able to give express franks to the railroad people is in order to get from the railroad people passes for the express employees?

Mr. HARRISON. That is one of the reasons; yes, sir.

The CHAIRMAN. In other words, you want to be able to transport express packages at the expense of the public, and express employees free at the expense of the public?

Mr. HARRISON. Well, we do not say that it is at the expense of the public altogether, Mr. Chairman.

The CHAIRMAN. Who pays the expense?

Mr. HARRISON. Well, the whole expense, after all, like every expense, comes out of the ultimate consumer.

The CHAIRMAN. Well, that is it.

Mr. HARRISON. But we do not think it would save the public anything to cut them off.

The CHAIRMAN. I am not arguing that; but you want to be able to do that at the expense of the public?

Mr. HARRISON. Our business is very closely connected with the railroad business. We are put under the interstate-commerce act and we are complying with that act as far as we possibly can. I think the commission realizes that we are complying with it, in absolute good faith. Now that act has brought about some disabilities and inconveniences, to say the least, but I am frank to say it has brought about a good deal of good to the carriers under it. We are under that act, and if there are any advantages that go with the regulations under the act we are left out in the cold, and we ought to have them.

Mr. RICHARDSON. I understand your position, then, is that you think the transportation of the personal effects of the employees of the express company ought to be granted to you, inasmuch as the interstate-commerce act has granted to the railroads the right to transport their own employees free?

Mr. HARRISON. Yes, sir.

Mr. RICHARDSON. Do you not think that all of that is covered by the provision that the railroads have the right to give to the employees on sleeping cars and express cars complimentary tickets? They get all that. You want to get more, then, than is given to the railroads. You get those complimentary tickets now. You do not pay railroad fare, do you?

Mr. HARRISON. I only get a pass when I travel on business.

Mr. RICHARDSON. On business, of course.

Mr. HARRISON. Of course I can say that, and the committee can believe it. I have no personal interest in it myself, because I do very little traveling. I brought my wife down here with me, and I did not ask for a pass for her.

Mr. RICHARDSON. My question did not mean that.

Mr. HARRISON. I understand that, Mr. Richardson.

Mr. RICHARDSON. What I mean is the fact that the railroads now extend to the express companies' employees generally, without exception, a complimentary pass.

Mr. HARRISON. Yes; they do.

Mr. RICHARDSON. They get that now?

Mr. HARRISON. They do.

Mr. ADAMSON. You feel like you ought to be able to reciprocate by carrying the packages free for the railroad employees?

Mr. HARRISON. Yes; to a fair extent, and we certainly feel that, beyond that, we ought to be allowed to carry the packages of our own employees. We have an employee at Richmond, Va., for instance, who has a friend or a son or some other relative that he wants to buy a turkey and send it to him Christmas, or something like that. We feel we ought to have the right to carry that free.

Mr. SIMS. Provided this bill is passed, amended as you advocate, would it not practically enable all express employees living in cities like New York, Philadelphia, Washington, or anywhere, to buy and have shipped by free express goods in the cheapest markets to which these express lines run, thereby avoiding the higher charges for like articles in the cities of their residence? Would it not have that effect?

Mr. HARRISON. I think so, undoubtedly, and I have had many employees tell me that.

Mr. SIMS. Do you not think it would be cruel to further depress prices in large cities? I am paying 60 cents a gallon here for buttermilk.

Mr. HARRISON. I am one of the fellows, Mr. Committeeman, who would like to see the prices depressed, because I have to buy everything I use.

Mr. SIMS. Seriously, would it not, in effect, be a discrimination in freight rates, as against the people who must buy in the local markets in favor of the express employees, who buy elsewhere and do not have to patronize the local markets?

Mr. HARRISON. It would be to that extent a discrimination. I do not think it would be an unjust discrimination, and I think the amount of it would be so small compared to the whole amount of business of that kind that it would be infinitesimal.

Mr. SIMS. It would be negligible.

Mr. HARRISON. It would be negligible. I have not undertaken to go into the details of the matter, and I do not want to take up the time of the committee by making an argument. We feel that we are under the law. We are complying with the law, and we see no reason why, so far as the pass provisions are concerned, if the railroad company is entitled or authorized to have that privilege, or if Congress in its wisdom, or, I might say, in its mercy, gives the railroad company that privilege, to transport its employees and their wives and children and the members of their family, the express company, which does no passenger transportation, should not have the same privilege.

Mr. SIMS. You do not think, in effect, it would further depress prices of food products in the cities?

Mr. HARRISON. No; I do not think so. I know, not from my own personal experience, but from what I am told, that the so-called "free transportation" that the express companies or the railroad companies either give to their employees does not come out of the public in any real sense, because that transportation, while it costs something to carry that stuff, would not take place and the goods would not be carried in a great majority of cases unless the transportation were free.

Now, there was another question I wanted to suggest.

Mr. SIMS. Has not the pass amendment, generally, been of benefit to the railroads?

Mr. HARRISON. I think so.

Mr. SIMS. Would not that be the natural effect of any kind of pass legislation?

Mr. HARRISON. I think so, but I do not think that ought to be extended so as to cut the employees out of those things. They are courtesies that I think the railroad company ought to have the right to extend to its employees, although it is a public servant, just as an individual or a concern in a purely private business has.

Mr. ADAMSON. I think that exception was made in consideration of the fact that it was really a part of the pay of the employees.

Mr. HARRISON. We claim the same thing, that it helps our employees. It keeps them satisfied. It enables them to live better and cheaper, and does not do anybody any harm.

Mr. SIMS. They can live better at the same salary than other employees who have to patronize the local market.

Mr. HARRISON. I think so.

Mr. ADAMSON. I should think they could pay the express on it and get buttermilk here cheaper than 60 cents a gallon.

Mr. HARRISON. I would like to leave this bill with the clerk for such consideration as the committee cares to give it.

The CHAIRMAN. I do not see how that would do any good. We have no way of printing a matter of that sort, unless you call specific attention to what you want in the record. Call to the attention of the clerk what change you want put in, and that will go in the record, and we will have it.

Mr. HARRISON. May I hand that in myself afterwards, to save time?

The CHAIRMAN. Certainly.

Mr. HARRISON. Now, there was another matter that I have been asked to bring to the attention of the committee, by the American

Railway Association. The American Railway Association is an association whose object is the discussion and recommendation of methods for the management and operation of the American railways. I understand that association cooperates fully with the Interstate Commerce Commission and also cooperates with other government bureaus in aiding the efficient operation of the railroads in this country, and also takes up railroad questions with railroad parties all over the world. It is a well-known, conservative body.

Mr. TOWNSEND. Who constitutes that?

Mr. HARRISON. Its membership constitutes practically all the railroads in the country.

Mr. TOWNSEND. It is made up of railroad men?

Mr. HARRISON. Yes, sir. It is the American Railroad Association, and that was the object. For instance, they have gotten up these rules in reference to explosives.

Mr. TOWNSEND. It is the operating officers?

Mr. HARRISON. It is the operating officers of these various companies. They have gotten up the rules in reference to explosives, in connection with Colonel Dunn, which have been approved by the Interstate Commerce Commission. They have rather intimate relations with some foreign railroads. For instance, they have international meetings. There is one to be held at Berne, Switzerland, this year, to which the various railroads in the United States are going to send representatives. The Interstate Commerce Commission is going to send two representatives. A good many of the English railroads and some of the French and German railroads have offices in this country. A good many of our American railroads have offices abroad. There is almost as intimate a relation between some of those railroads and the American railroads as there is between two American railroads. There has been a good deal of embarrassment sometimes on the part of our people going abroad to conventions and meetings and sending expert railroad men over there to investigate the way the railways were managed and their sending expert railroad men and governmental officers here to investigate the way our railroads are managed by the fact that they could not give those people passes.

Now, the American Railroad Association wanted to present that to the committee to see if they would not make some authority of that kind. They have nothing whatever to do with rates, or anything of that kind. Their function is simply to take up these broad questions of railway management. They take the matter up with the Interstate Commerce Commission. The commission has held, and held properly, I think, that the pass provisions of the interstate commerce act only apply to carriers subject to the act. They took the matter up with the commission to see if they could not possibly get that ruling extended so that they could, in specific cases where it was deemed to be necessary to avoid embarrassment, issue transportation for officials of foreign railways and some officials of foreign governments, who are also railway officials, who are traveling in this country for the purpose of investigating the railroad situation. With the permission of the committee, I would like to read a letter from one of the members of the Interstate Commerce Commission on the subject. I have not permission to give the gentleman's name, but I would like to state the substance of it.

Mr. ADAMSON. I do not see any use in giving us the letter, because we will find out his name.

Mr. HARRISON. I think that would be all right. I intended to go by and ask him, but I did not have time. I will merely, then, make this suggestion to the committee. If they look favorably on that, I would ask them to communicate with the Interstate Commerce Commission.

Mr. ESCH. Do the foreign countries extend such courtesies to our railroad men when they are traveling abroad?

Mr. HARRISON. Yes, sir. There is to be a meeting known as the "International Railway Congress," in Berne, Switzerland, this year. Our people, including the Interstate Commerce Commission, will probably be taken over and carried around on the European railways and everything explained to them. We can not do that when they come over here.

Mr. ADAMSON. You ought to see the State Department about stopping courtesies between our nabobs and foreign nabobs.

Mr. HARRISON. I do not think they are nabobs.

Mr. SIMS. They are the men who do the practical work.

Mr. HARRISON. Yes.

Mr. SIMS. I suppose it is quite embarrassing to invite some gentlemen from abroad to come here and inspect our railroads, and when they come here to tell them to put up.

Mr. HARRISON. These gentlemen say so. There are some of them here. Probably Mr. Smith, of the New York Central, knows about it, and will make a statement to the committee.

Mr. SMITH. I did not come here for this purpose, but perhaps just as a matter of enlightenment I might state that the commission sent abroad by the Interstate Commerce Commission to inspect signal practices in the European countries were given transportation courtesies by the railroads over there, and every opportunity. If they should send anyone over here to inspect our railroads, we could not do the same thing. The International Railway Congress, made up of all the railway operating officers in the civilized world, practically, where railroads predominate to any extent, could meet every two or three years. The next convention is at Berne, Switzerland. I am to be a delegate there. I presume when we land on the French shore we will be extended the courtesy to Berne, but if we should have a similar convention at Chicago we would have to tell them to pay their fare.

Mr. TOWNSEND. Mr. Smith, there would be no objection to bringing that up at that time. This provision is broader than that, as I understand it.

Mr. SMITH. I understand the Interstate Commerce Commission, if I am correctly informed, say they have no authority to extend the provision.

Mr. TOWNSEND. No; to meet that particular condition we would have to have legislation, no doubt.

Mr. SMITH. For this convention?

Mr. TOWNSEND. Yes.

Mr. ADAMSON. I do not know of any restriction in the Constitution or in the commerce laws on the power of this association to raise that money and pay the fare of the visitors.

Mr. SMITH. Well, one can pay their fare and do all those things. The only question is, the exchange of ideas is what makes for progress in railroading as well as in everything else. There is no doubt but what the European railways are well advanced in a great many ways, and it is good to study them. On the other hand, the American railways are well advanced over the English and the European railways in the matter of economy of operation, tonnage, and all that sort of thing, and they want to come over here and study our methods. The Japanese Government have had men here for a number of years, and the German Government sent men here, to my personal knowledge, perhaps two or three or four times a year. That same representative from either Japan or Germany or England or France, or somewhere, is over here studying our methods and what we are doing.

The CHAIRMAN. We have a number of people studying those methods you referred to a while ago, and when they travel in the United States they pay their fare.

Mr. SMITH. When they travel in Europe, they do not.

The CHAIRMAN. I understand; but when they travel here we make them pay their fare.

Mr. SMITH. You put it in the law. I believe experts of a government who are studying here could properly be handled free.

Mr. ADAMSON. The proposition now is that we pay the expenses of their representatives who come to learn what we know, in advance of them, about those things.

Mr. SMITH. And we go over there to study things, you know.

Mr. SIMS. Do not the officials of this country learn something from the officials of the foreign countries when they visit here?

Mr. SMITH. Yes. The only difference there would be that one is word of mouth and the other is observation.

Mr. SIMS. Is it not a fact that there are fewer accidents on railroads in England than there are in the United States?

Mr. SMITH. It is a general measure—the measure of distance or the measure of numbers. There is one thing to be remarked about the English railroad or the French railroad. Their right of way is absolutely free to them, and the grade crossings are separated.

Mr. SIMS. I did not intend to go into discussion. I just ask if that is not a fact. I thought you gentlemen might learn something on that line if you went to England and studied railroading.

Mr. SMITH. There are more in number here, I think.

Mr. FAULKNER. Mr. Chairman, I will ask the committee to take up now House bill 10888, which is the full-crew bill, and Mr. Smith, of the New York Central, has promised to give a general review of it.

STATEMENT OF ALFRED H. SMITH, VICE-PRESIDENT AND GENERAL MANAGER NEW YORK CENTRAL LINES EAST OF BUFFALO.

Mr. SMITH. Mr. Chairman and gentlemen, I am vice-president and general manager of the New York Central lines east of Buffalo. I suppose, properly, I should qualify a little. I have been in the railway business for thirty-two years, extending from messenger boy to construction, the running of trains, superintendent, assistant general

superintendent, general superintendent, general manager, and vice-president and general manager, extending over the lines between New York and Chicago, Michigan, Indiana, and Pennsylvania.

I want to address you as regards this bill on its general principles. The detail, I believe, will be presented by others, largely.

My view of the bill and my experience and knowledge of the operation is that it affects the safety of operation, in that it affects discipline. After all of the mechanical devices are provided, the underlying principle follows the human equation, and in that enters this question of discipline, which is the mighty problem in the operation of these railroads. When you provide by law that the number of men upon any particular portion of the operation of a railroad shall be in any number so many, you take away from the officer, the direct head of that corporation, that strength that must be in him if he is going to safely conduct these properties, whether it be the men upon a train, the number of men in a tower, upon a switch engine, upon the tracks, or in the station. As long as you hold that man responsible for results, safe results as well as all other results that must come, you take away from him the only strength that he has, and I can not find words enough to deplore any such situation upon railroads.

Leaving out the question of money cost, which can not be considered in any event at any time when it comes down to the question of safety of a line, the entire matter comes back to the one of discipline and the control of the man. When we can not control him, we can not conduct it safely. That is the broad principle that I wanted to mention here this morning. We have statistics and details, and I think I can safely say that the opinion I have expressed here this morning would be repeated practically unanimously by the operating officers of the United States, as well as abroad, for that matter, for I know some of them over there very well.

You must leave with us the question of the number of men. The power brake, the grade, the conditions surrounding the operation, the signals, and a hundred and one things that enter into the movement of these trains must govern the number of men. This bill provides that you must have six men upon a train. It may be that you ought to have seven or that you ought to have eight. There are times when five are all that are necessary, and when you have more men than you need, it merely causes a division of responsibility as between men, as to which one should do one thing that is necessary, and only one being necessary.

These men will not ride out on the middle of these trains. There would not be any need for them to do it if they would, but they will not. It does not make any difference what they say. I know they will not, unless you stand behind them and force them out there. We had this same argument in the State of New York, before Governor Hughes, a year ago, and the governor, after hearing the remarks, vetoed the bill.

I think that is all, gentlemen. That is the broad principle of this. You are getting onto very, very dangerous ground.

Mr. RICHARDSON. The same requirement applies to all the branch roads, does it not?

Mr. SMITH. Everywhere. Let the officers decide what it should be. I do not know what your business is or what you might do, but if you

are going to conduct anything, be it a factory or a farm, you must know, with the result to be obtained, how many men you are going to require to do it. Otherwise you are not competent to run the business and you will make a failure.

Mr. RICHARDSON. Does not this bill in its practical effect absolutely require the addition of two more men than are generally run?

Mr. SMITH. It requires one more man.

Mr. RICHARDSON. Uniformly one more man?

Mr. SMITH. Uniformly one more man, as I recall the bill. We have an engineer, a fireman, two trainmen, and a conductor. This bill provides that there shall be three trainmen. I think the bill says a flagman and two trainmen, but they are all the same. The flagman at 10 o'clock is gone and the trainman is the flagman. There you are.

Mr. RICHARDSON. You said just now, as I understood you, Mr. Smith, that those men would not ride on the top of a train. Where would you find them; in the caboose?

Mr. SMITH. In the caboose.

Mr. RICHARDSON. They would be there because there would not be any work to do there up on top?

Mr. SMITH. They would not have anything to do.

Mr. RICHARDSON. They would be useless and supernumerary?

Mr. SMITH. Yes, sir.

Mr. RICHARDSON. Have you not made some estimate of what this requirement of an additional employee would cost the railroads of this country?

Mr. SMITH. They have figures here. On our own line it will cost us \$600,000 a year, approximately.

Mr. RICHARDSON. And it does not, you say, give any additional security for life?

Mr. SMITH. Not in the slightest. There are times, if you please, when we should have more men than that.

Mr. HUBBARD. Do any of your trains now usually carry as many men as would be required by this bill?

Mr. SMITH. Oh, yes; we carry more than that. Sometimes we carry less than that. Let me illustrate. You take a fast freight, leaving New York for Buffalo, made up of 45 cars, all air from the caboose to the engine. The coupling is never broken. They never throw a switch. There is not a thing to do but to ride over that road and smell for hot boxes. That is all they have to do, keep a watch upon the train. The engineer reads his route and proceeds to Buffalo, and the train is delivered to the connecting line. If it stops, the flagman goes back and another man drops into his position. There are times in storms and stress—

Mr. HUBBARD. Such a train as that, I presume, does not carry as many men as would be required by this bill.

Mr. SMITH. It carries five men—two trainmen, the conductor, the engineer, and the fireman. Your bill says we must put upon that train another man, and for the life of me, gentlemen, I do not know what the devil to do with him, only to let him sleep in the caboose.

Mr. HUBBARD. What trains have you that usually carry as many men as this bill would require?

Mr. SMITH. The train that picks up and leaves cars. We have trains going down heavy grades where we put 2 and sometimes 3 more men. I have an argument now with the honorable Interstate Com-

merce Commission, or some of its representatives, in reference to the number of men, in which they say I have too many men because I am going down a mountain. Previous to my taking charge over there, they used to have a train run away down there three or four times a year and cause a great deal of damage, with the danger of going into a passenger train or fouling the other track and causing disaster. I directed that they should put on expert riders.

These men become more or less expert in their business. Some men can hold a train and take it down safely and other men can not. It is not a question of just merely manual labor. It requires a good deal of training and judgment in the matter. I put these men upon the train to take it down, and since that time, two years ago, we fortunately have not had any trouble.

I hold the train by hand. The law says I must hold it by air. In my judgment, and I have had a great deal of experience on lines west handling iron ore and coal, I can better hold that train by hand, holding the air in reserve for the emergency stop when I want to stop, than I can by using the air with the possibility of the engineer wasting it, and finally, when he wants to stop, he has no air, and away it goes. And then he can not get it back. That is the history of a train running away. That is what causes it to run away. He either slips his tire, or wastes his air, or something of that kind. On the other hand, the man must be an expert brakeman going down that hill. Otherwise he would burst a wheel. Then you are in trouble again.

So that I wish to impress upon you that you have got to know a little about this business. I have been in it thirty-two years, and I do not know much about it yet. I guess when I have been in it thirty-two years more I will be aware that I do not know much about it then.

The CHAIRMAN. As I understand your main proposition, it is that the railroad officials are or ought to be able to know more about how to operate the road than the public officials, and that therefore the Government ought not to interfere in any case in connection with the railroads.

Mr. SMITH. I have not gone that far.

The CHAIRMAN. That was your broad principle.

Mr. SMITH. My broad principle is one of safety, and a question that the officer must know. I take it there is this simile, that you may just as well pass legislation how a man will fight a battle and how he will handle his troops and how many men he will put here and how many there, and say he must place them there and then he must win the battle.

Mr. ADAMSON. You think, perhaps, the railroad operatives have sufficient interest in the matter to justify the law in leaving to their discretion and judgment some of the details of management?

Mr. SMITH. I absolutely do.

Mr. RICHARDSON. And this particular service, as I understand, is a delicate one and one resting within the sound discretion and judgment of the men who are in control of a railroad, and you do not undertake to say, as has been intimated, that the Government has no authority to do these things? You simply say it is an important matter, and those men can run it better than this committee can, who have no knowledge of those things, and you made no intimation to the contrary?

Mr. SMITH. Absolutely. The Government is a good monitor. Likewise the Interstate Commerce Commission is a good monitor. We were better school boys when we had monitors, and I think we are better railroad men since we have had monitors. There was that feeling of arbitrariness that perhaps existed. There is no doubt that it did. We are here in no spirit of independence at all. I am just merely giving you the benefit of my years of experience, whatever they may be, and my knowledge, whatever that may be.

Gentlemen, I think it is unsafe, and I am just as sure as I am standing here that it will be proven to be unsafe if it becomes a law.

Mr. TOWNSEND. I want to ask you this, Mr. Smith; there are only two reasons why this should be enacted, or why Congress could possibly enact it: One is that it would be probably better for the railroad employees, safer for them, and secondly because it would be safer and better for the public?

Mr. SMITH. Yes, sir.

Mr. TOWNSEND. Those are the only two grounds upon which we could act, as I assume. Will this accomplish either one of those results?

Mr. SMITH. It will not. It will be more damage to the employee than the present method. I realize, gentlemen, when I am talking to you here this morning, what pressure you may get from the other side. I know him. I was one of him. I was brought up with him. I have slept with him and eaten with him and worked with him. I know him, and it will be to his detriment and to his damage.

The discipline of a railroad to-day, gentlemen, is getting to be greater than that of the army or the navy, because 99 per cent of a man's work has got to be done outside of the eye of the officer. It is entirely outside of direction. You gentlemen go to your homes. You go upon one of these trains, and the man who flags the train and the man who runs the train is outside of the direction of the officer. He has to do it by rule, and by that forcible discipline that is reaching him from perhaps a hundred or two hundred miles away from him. He has to go out whether it is snowing or raining or whatever it is, and, for God's sake, I hope that nothing will ever be done that will take away from the officer that question of discipline. Make your laws to help the other way, if you like, but do not take it away; and I know, for I have been up against it for twenty years now, absolutely in detail.

Mr. TOWNSEND. Who is demanding this legislation, if you know, Mr. Smith?

Mr. SMITH. I do not know; but I believe it is the men themselves who have petitioned for this, because we have had grievance committees request year after year, for several years, to have more men put upon a switch engine, more men put upon a train. We have in the State of New York to-day the question on the Pennsylvania division, where the public-service commission ordered another man upon the train. It is now up for appeal. The question was on my desk when I left. It is up for a rehearing.

The public-service commission said if we would put in another sidetrack it would be all right. I said: "That is all right. If it can be made more safe, and if you think a sidetrack will do it, I will put it in." I put it in, and it has been there a year, but they have no yet reheard the case.

Mr. RICHARDSON. You do not undertake to say that you are not morally satisfied what organization is behind this bill? You do not mean to say that?

Mr. SMITH. That I am not morally satisfied?

Mr. RICHARDSON. Yes.

Mr. SMITH. Yes; I am morally satisfied in my mind, but when I stand here to state a fact, I do not know.

Mr. RICHARDSON. I understand that the head of the organization has not come right at you and told you all about it?

Mr. SMITH. No.

Mr. RICHARDSON. But you practically, with the broad observation you have had in all these matters, know what organization is behind this bill?

Mr. SMITH. Yes, sir.

Mr. RICHARDSON. Don't you know it is the labor organization?

Mr. SMITH. Certainly. It is the men themselves, but it is only a part of them—practically the trainmen's organization.

Mr. ADAMSON. It would mean an additional salary on each train you ran, whether you need the man or not?

Mr. SMITH. Yes, sir.

Mr. RICHARDSON. It would mean one more man employed?

Mr. SMITH. Yes, sir.

Mr. PETERS. What are the provisions of the New York bill you referred to as being vetoed? Is it somewhat similar to this one?

Mr. SMITH. Yes; it is practically the same bill, as I recall.

Mr. PETERS. Would the railroad commission of New York have authority to make a ruling requiring you to supply the number of hands provided in this bill if they deemed it necessary for public safety?

Mr. SMITH. I am not sure of the law. If the railroad commission of New York State or any other State gave us an order in the line of safety, we would comply with it anyway, whether we had the authority or not.

There is this feature about it: My experience with the commission generally is that when it comes down to a question of safety it is a hot iron, and they don't touch it, whatever it is. I mean when the responsibility comes back to the commission. This question of discipline and the relation of labor to the operation is one that is having very careful consideration, to my personal knowledge, by certain commissions. They have talked with me about it a great deal. They realize that it is a very delicate and far-reaching subject, and they have not undertaken to do anything with it.

Mr. ESCH. As I understand it, the State of Indiana, through which your road runs, has a full-crew law. How does the law operate in that State?

Mr. SMITH. They put this man on, ride him through Indiana, and take him off again, complying with that state law.

Mr. ESCH. Can you tell any difference between the runs when he is on and when he is off?

Mr. SMITH. Not a particle. He merely sits there and warms his shins in the winter and rides out on deck in the sun in the summer.

Mr. PETERS. Could you file with us the veto message you refer to?

Mr. PAULDING. I will file that, Mr. Peters.

Mr. PETERS. Do you know whether this has ever been taken up by the railroad commission of the State of Massachusetts, the same question?

Mr. SMITH. Yes, sir.

Mr. ADAMSON. I was going to say you ought to let one of your men rest and work that fellow while you are going through Indiana.

Mr. SMITH. As a matter of fact, you know, on many of these trains going through Indiana they are in this same position. Unless there is a necessity to flag there is nothing to do anyway, only to watch.

Mr. ESCH. On a long train does the forward brakeman ride in the cab?

Mr. SMITH. In the engine; yes, sir. That is true whether it is a long train or a short one, unless it is a matter of running light with the caboose.

Mr. ESCH. That is for convenience in approaching the station?

Mr. SMITH. It is necessary to have him ahead to transfer signals. The fireman is firing and the engineer must be looking ahead. This trainman on the forward end must be looking back, because if anything is wrong on the rear they signal him and he will catch it and transfer it to the engineer.

Mr. ESCH. On the Burlington road, along the Mississippi River, in Wisconsin and Illinois, they carry sometimes 60 or 70 or 80 cars. Of course that is a very crooked road, following the bends of the river. Oftentimes it is difficult for the forward brakeman to transmit a signal to the rear or the caboose on account of the curvature. Do you think the advantage of having an extra brakeman on such a train would pay for the extra expense?

Mr. SMITH. You mean with this train moving?

Mr. ESCH. Yes.

Mr. SMITH. If you could get the man in the middle where he could transfer this signal it would, but he would not go there unless he would have a United States trooper to make him go there.

Mr. ESCH. You have him in the cab or in the caboose?

Mr. SMITH. Yes. He would not go there and I would not go there. I would not blame him for not going there.

Mr. ESCH. If they were flat cars, construction cars, cars equipped with machinery, and so forth, I can conceive that it would be impossible to get him there.

Mr. SMITH. He would not go there. The emergency brake goes on and he can never tell which part of that train is going to be shot out. He would not locate himself where he would be thrown onto the roadbed; he does not want to go there.

Mr. ESCH. He does not want to go; but I have seen some of them there.

Mr. SMITH. Ordinarily you will see them coming into stations or in working runs. They will do it in working. There is no question about that. But taking your illustration of a 60-car train speeding along through the country, you can not put him there. Take it in New York State. If you pass legislation here as high as this room, a man can not live there.

Mr. TOWNSEND. You put him there in certain trains where you go down mountains, as I understand you?

Mr. SMITH. Yes; that is a matter of 5 or 6 miles. We put three of four of them on there. That is only a little while, Mr. Townsend; for thirty or forty minutes.

Mr. ESCH. How do they operate the trains on the mountain grades in Colorado?

Mr. SMITH. Well, I am not familiar with it. That is, I have not been out there, but they undoubtedly ride them down the way we do.

Mr. ESCH. Do they use this alternate power brake?

Mr. SMITH. They have that—the retaining valves.

Mr. ESCH. That is entirely practicable, is it?

Mr. SMITH. Yes, sir; when it is in good proper working condition. Like all other mechanical working appliances, they may leak, or something of that kind, and I have always felt safer with a man there, because a man has, in addition to everything else, if he is properly trained, that human intelligence so that he knows about when to change his wheel, and the danger about holding a brake too tight when the wheel begins to heat, and then it will burst off the hub.

Mr. ESCH. With the use of air on freight cars, have they strengthened the spring which removes the shoe from the wheel?

Mr. SMITH. That is all adjusted, sir.

Mr. ESCH. So that the hand brake no longer has the efficiency it had prior to the adoption of the air?

Mr. SMITH. Well, not by hand. They use a club. They have to have that lever to bring it up. Very few men have strength enough in their wrists and hands to make any perceptible sufficient braking power upon a good air-brake car now, particularly with these heavy cars, carrying 100,000 or 110,000 pounds of load. You have got to have a man with a stick to get a very strong leverage on there.

Mr. ADAMSON. That makes a form of leverage?

Mr. SMITH. Yes, sir.

Mr. KENNEDY. The work of a trainman is necessarily hazardous?

Mr. SMITH. Not as hazardous as it was, but all railroading is hazardous.

Mr. KENNEDY. It is considered a hazardous employment?

Mr. SMITH. Yes, sir.

Mr. KENNEDY. Then putting on a train a man for whom you have no use simply adds, necessarily, to the danger of accidents?

Mr. SMITH. One more man could get hurt in case of accident; yes, sir.

Mr. KENNEDY. So that as a rule you ought to have no more men than you need?

Mr. SMITH. That is just it. If you can only find that proper equalization of the thing—no more than you need, but have enough—that is the fine point to reach. If we could get there, we are all right.

Mr. KENNEDY. And to put a man on a train by law and compel him to ride along, incurring that constant danger—because it is hazardous—would be adding to the danger of accident?

Mr. SMITH. Yes, sir; and then if you and I were together, and were to do the same thing, I would think it was about time for you to go, and you would think, "That son of a gun hasn't done anything. It is about time he did it." As a matter of fact, neither one of us does it, and there is trouble.

Mr. SIMS. They might get to talking about the high prices of food?

Mr. SMITH. Yes; they get to talking about the old man's shortcomings down in the office, and neither one would think about it.

Mr. ADAMSON. They might be talking about putting another man on. [Laughter.]

Mr. PETERS. Can you tell the committee about the Massachusetts railroad commission?

Mr. SMITH. About their consideration of it?

Mr. PETERS. Yes.

Mr. SMITH. As I recall it, the legislature of Massachusetts passed a resolution requiring the commission of Massachusetts—which is made up of three members, one railroad man, one commercial man, and a lawyer—to investigate and report on this subject practically as this bill is outlined, and they reported against it, almost wholly, I believe, on the same foundation that I have tried to picture here this morning.

Mr. ESCH. Are you compelled to obey the Indiana law, being an interstate carrier, on through trains?

Mr. SMITH. Our legal friends say that we are. We do not get as much work out of them, by the way, as we do some others, and they have not had time yet to get after it on the question of legality. It is pending now.

Mr. HUBBARD. Maybe you have too many lawyers.

Mr. SMITH. We are getting so we can not turn around unless we go and ask a lawyer how to do; and he doesn't know much about it, really. [Laughter.]

Mr. RICHARDSON. There is too much legislation on this subject, is there not?

Mr. SMITH. I think so.

Mr. TOWNSEND. Is there anything further, Mr. Smith?

Mr. SMITH. No.

Mr. TOWNSEND. Who is your next witness?

Mr. FAULKNER. We will call Mr. Rice.

Mr. SIMS. Mr. Chairman, with regard to the same subject that has been referred to by the gentleman who has just taken his seat, I have a memorandum or a letter sent me by J. W. Thomas, jr., president and general manager of the Nashville, Chattanooga and St. Louis Railway, of Nashville, Tenn. I wish to state that Mr. Thomas is a practical railroad man, who has been engaged as such from childhood up. His father was president and general manager of the same road for many years. Mr. Thomas is a most competent man to speak upon these matters, and to give his evidence. He is not here, and I wish to file this letter.

Mr. ESCH (acting chairman). Without objection, the letter will be filed.

(The letter referred to is as follows:)

NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILWAY,
Nashville, Tenn., December 21, 1909.

The first provision, that on passenger trains of less than 3 cars an engineman, fireman, conductor, baggage master (if baggage is handled), and a flagman shall be employed. By way of explanation I would say that on some roads flagmen are known as brakemen.

On the vast majority of the roads in the South 2-car trains are run, particularly on branch lines. Such trains are usually manned with an engineman, fireman, con-

ductor, brakeman, and porter, the conductor or brakeman looking after the baggage. Another combination is to have an engineman, fireman, conductor, joint baggage master and express messenger, and porter.

Many trains are run without the slightest idea of their paying expenses, and to require that a baggage master must be employed, if baggage is handled, and a brakeman substituted for the porter, or one employed in addition to the porter, simply increases the deficit and in no way adds to the efficiency of the service.

While most roads run some 2-car trains, particularly on branch lines, many branch-line trains are made up of 3, 4, and sometimes 5 cars, for we must provide for mail, baggage, and express, negro passengers, white passengers, and in addition, a smoking compartment. Then, again, on such trains we find it quite an accommodation to our patrons to run through coaches from some points on branch lines to points on main line, other than junction points with such branches. Deadhead equipment must also be handled—that is, getting cars to and from the shops, etc. On these trains the traffic in many instances could be handled in 2 cars. For instance: Out of Decherd we have a train composed of 4 cars—1 car for baggage, mail, and express; 2 coaches for Fayetteville; and a through coach from Nashville to Huntsville. It is safe to say that all of the passengers in the 3 cars could, as a rule, be handled in 1 coach. The men who can handle a 2-car train properly can handle a 3-car train equally as well, be the train run over a branch line or a main line where business is light. By light business I have reference to the number of trains handled. I have already shown our practice on branch lines with 2, 3, 4, or possibly 5 car trains, i. e., that they are handled successfully and have been for years with a conductor, baggage master, and a porter, or a conductor, brakeman, and porter; the conductor or brakeman looking after the baggage. The truth is we have been for years operating 3, 4, and 5 cars with a conductor, joint baggage master and express messenger, and porter.

By the second provision of the bill—that is, where trains consist of 3 or more cars—the crew behind the engine must be composed of a conductor, baggagemaster (if baggage is handled), flagman, and brakeman. As heretofore stated, the enforcement of this provision on branch lines would be very burdensome and would not add to the efficiency of the service. The same thing applies with equal force to main-line trains. We have for years been successfully operating trains of 3 to 12 cars, and even more, with a conductor, baggagemaster, brakeman, and porter, and I can not recall a single instance where an accident would have been averted had there been an additional man on the train, as the bill calls for. He would simply be a monument to idleness, setting a bad example.

Before leaving terminals and at most points where cars are taken on or set off, the air-brake hose, signal hose, and steam-heat hose are coupled up, and the system, whether it be brakes, signal, or steam-heat, is tested by inspectors and not by trainmen.

As you know, brakes are handled from the engine without the assistance of the brakeman or flagman, as they are sometimes called. As heretofore stated, the additional man would in nowise add to the efficiency of the service. He would only sit around in the way and, to say the least, in a manner divide the responsibility, which on railroads is a dangerous practice.

As you are aware, it is almost the universal practice of roads in the South to employ a porter on passenger trains. The bill does not prohibit the employment of train porters, nor do I believe we could dispense with them, for the reason that we could not get white men who would act as brakemen to do the work of the train porters. If I thought this at all probable, I would have reason to believe that the advocates of the bill not only wish to force the roads to employ more men but to drive the negro from the train service altogether.

The bill further provides that in case of freight trains with less than 25 cars a conductor, 1 brakeman, and a flagman must be employed. This, I believe, is the universal practice. Many trains of less than 25 cars have a third brakeman, but these trains do a lot of switching en route and are what we term local or pickup trains. The bill goes further and stipulates that where a train consists of 25 or more cars a conductor, 2 brakemen, and a flagman must be employed. How absurd all this is. Here we have a train of 24 cars. Many of them are to be switched out on line of road and others taken on. As there are less than 25 cars in the train, only 2 brakemen are to be employed. On the other hand, we have a train of 25 cars, not one of which has to be switched out on line of road, nor has this train to pick up any additional cars, but we must have 3 men behind the engine besides the conductor. It is safe to assume—in fact, we know—that the front brakeman is usually found on the engine while trains are in motion—95 per cent of the time, I should say—and the rear brakeman or the flagman is in the caboose. The extra man would either be on the engine in the way or in the caboose doing nothing.

The conditions under which trains are operated, even on the same division of the main line, and the various branches of a system are so varied that I do not believe any

hard and fast rule can be applied as to the number of men to be employed on trains. It strikes me that the operating officials are the proper ones to determine just how many men should be employed under the various conditions.

As you are aware, there is a law requiring that 75 per cent of the air brakes on freight trains be operative. Our information is that a much larger per cent obtains, and as 75 per cent is ample to control trains, except on very heavy grades, 2½ or 3 per cent and over, very little hand braking is required. As in the case of passenger trains, freight trains are coupled up and inspected by inspectors before leaving busy terminals.

During heavy business periods, it is with difficulty that the railroads are able to obtain sufficient men of experience. Now, to add to the number of employees, and that unnecessarily, makes the risk greater and the burden more irksome.

Negligence of employees, not the lack of safety appliances nor the proper maintenance thereof, is the cause of 80 per cent of all accidents on railroads.

Reports from 292 railroads, aggregating 228,801 miles, show that to comply with the so-called "full crew" bill will cost such roads \$19,200,000 per annum, which is equivalent to a capital expenditure of nearly \$500,000,000. If the roads are forced to expend this amount for additional men—men who, in the judgment of operating officials, are not needed—the sum must be gotten either by increased rates or the withdrawal of a like sum from other expenditures. It would cost the Nashville, Chattanooga and St. Louis Railway approximately \$4,500 per month. I say to you candidly that the additional man is not needed and would not add to the safety of our patrons or employees, or to the efficiency of the service in any manner, and that this money can be spent much more judiciously in the way of additional equipment, signals, better track, interlocking, depots, etc.

The proposed law is so entirely unnecessary that I am unable to sum up one argument in its favor. I can not imagine why such a bill was ever contemplated, except it be by the antagonistic element in the labor organizations; the idea with them being that if they can get the law passed the railroads will be forced to give employment to more men.

I trust, after giving this matter careful consideration, you will see your way clear to use your influence against the bill and to vote against it should it be reported upon favorably by the committee.

Mr. ESCH (acting chairman). Who is the next witness?

Mr. PAULDING. Mr. Chairman, Mr. Peters has asked about the veto message of Governor Hughes in the State of New York. I have a copy of it here, and I will read it into the record. It is as follows:

[Public papers of Governor Hughes, 1907, at pp. 94 and 95.]

VETOES.

STATE OF NEW YORK, EXECUTIVE CHAMBER,
Albany, June 15, 1907.

To the Assembly:

I return herewith, without my approval, assembly bill No. 455 (senate reprint No. 1338) entitled "An act to better protect the lives of railroad employees."

This bill provides that it shall be unlawful for any railroad company in the State of New York "that runs more than four freight trains in twenty-four hours" to run over any part of its road outside of yard limits any freight train composed of more than 20 cars with less than a full crew of six persons, to wit: one engineer, one fireman, one conductor, and three brakemen; or a light engine without cars, without a crew composed of one engineer, one fireman, one conductor or flagman, when running a distance of 10 miles or more from starting point.

According to present practice freight trains are very generally operated with a crew of five persons, and the object of this bill is to compel the employment of an additional brakeman. The necessity for this is said to lie in the fact that without three brakemen the freight trains are insufficiently manned, and that firemen are compelled to leave their places in all kinds of weather to throw switches when the two brakemen are required, respectively, to go ahead of and behind the train.

This bill, however, upon the facts developed before me upon the hearing and undisputed, is clearly unconstitutional. Such a measure should define the service required, with suitable reference to circumstances and conditions, so that the law would apply in proper cases, and not otherwise. The bill takes no account of the differences between the different roads and parts of roads in trackage and switching facilities and of the fact that what may be necessary in the case of some railroads may be wholly unnecessary in others. In the case of the New York Central Railroad it was shown that the trackage and switching facilities on its main line were of such a

character as to make unnecessary the employment of a third brakeman in accordance with the provisions of the bill. This was frankly conceded by supporters of the bill.

To require the expenditure of a very large amount of money (estimated at several hundred thousand dollars annually) without necessity for the outlay is simply arbitrary exaction and a taking of property without due process of law. The bill does not refer its requirements to any proper standard of necessity or provide any criterion by which its proper application under varying conditions is to be determined. It contains an absolute requirement which, upon the facts conceded before me, can not be justified.

CHARLES E. HUGHES.

Mr. ESCH. Do you happen to know how many States have full-crew laws?

Mr. PAULDING. Thirteen, but they are not all alike. They are not uniform laws at all.

Mr. SIMS. Have you filed with that veto message the bill that it vetoed?

Mr. PAULDING. I can do that, but it describes the bill. It is a very short bill and in conformity with the governor's statement.

Mr. SIMS. I just wanted to see how it compares with the bill here.

Mr. PAULDING. It is not as long, Mr. Chairman. I appeared before Governor Hughes on this measure and I represented our company before the legislature. It is a very short bill.

Mr. RICHARDSON. The governor's veto sets out the bill?

Mr. PAULDING. It sets out the facts.

Mr. RICHARDSON. He says not more than four freight trains in twenty-four hours.

Mr. PAULDING. It applies to all roads that run more than four trains in twenty-four hours.

Mr. LITTLEPAGE. Our next witness is Mr. Rice.

STATEMENT OF F. C. RICE, REPRESENTING THE CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY.

Mr. RICE. I have to say, Mr. Chairman, that if this bill should become enacted into law it would cost the Chicago, Burlington and Quincy Company about \$850,000 a year, for which we do not feel that we would receive any benefit in the way of safety.

The CHAIRMAN. How do you figure that cost out?

Mr. RICE. By taking the number of crews that we run. In the first place, let me explain. The bill gives an artificial figure, 25 cars on freight trains. It says 25 cars or more shall have three brakemen. The bill need not have said that. It really did not make any difference. It might have left that out, because if you make the number 25 it means that every freight train must have three brakemen, because we do not run any train on the Chicago, Burlington and Quincy road that is not likely to accumulate more than 25 cars. It may possibly have 24 or 23, but the chances of its having more are so great that we would have to have that extra man. I have a statement here of the cost to the railroads of the country.

The CHAIRMAN. If you have the figures as to how you arrive at the cost on your own road, it might be instructive to give them.

Mr. RICE. For instance, commencing at Chicago, we have a freight pool that runs to Galesburg, 163 miles. In that pool there are thirty-odd crews—nearly 40 freight crews—and each one of those crews is equipped with two brakemen. If this bill should be enacted, that

would compel us to put on 30 or 40 additional brakemen. Now, we take the crews all over the railroad in just that manner. We take each crew and figure that we would have to have another man, which we would. We have not a crew on the road that would not require another man under the law.

The CHAIRMAN. How much expense did you figure each extra man would be?

Mr. RICE. We took his average earnings, about \$75 a month. We took the average earning for the parts of the road that he was on, the divisions on which he was engaged.

Now, the same application was made to 292 railroads in the United States. There are something over 300, but on those 292 railroads, comprising 220,000 miles, the estimated additional cost was \$20,281,000 a year.

The CHAIRMAN. That is based on how many crews?

Mr. RICE. Each road reported for itself. I do not know how many crews they had. That was for the 292 railroads. The Chicago, Burlington and Quincy part would cost about \$850,000 a year.

The CHAIRMAN. That is based on how many crews?

Mr. RICE. I do not remember the crews now, but we added a man to each crew, and I think we figured \$70 a month additional money on passenger crews and on freight crews, and that made this amount.

Mr. ESCH. That was on the assumption that the haulage would be uniform throughout the year. At some seasons of the year, of course, your trains are smaller than others.

Mr. RICE. We took a period of months in the year. We skipped every other month in the year, so as to get an average.

Mr. TOWNSEND. You did not include your passenger crews, did you?

Mr. RICE. Yes, sir.

Mr. TOWNSEND. Do your passenger trains average 25 cars?

Mr. RICE. Oh, no; but then the law contemplates passenger crews, you know. The bill requires that all passenger trains of less than three cars shall have two brakemen and three cars or more shall have three brakemen. Of course, we had to figure on that.

The CHAIRMAN. How many crews do you have on the Chicago, Burlington and Quincy?

Mr. RICE. I could not tell you. We have over 9,000 miles of railroad, and I would have to do some figuring to say how many crews.

The CHAIRMAN. Somebody must have done the figuring.

Mr. RICE. Yes; but I haven't it at my tongue's end. If I would take a little time I might give it. I can file a statement of the number of crews.

Mr. SIMS. In those States having full-crew laws, would this bill add anything to the burden of the railroads?

Mr. RICE. Yes; the question was asked a few moments ago how many States had enacted laws. There are 13, but 5 of the 13 are so harmless that they amount to nothing. There is one in Illinois. They have a full-crew law there, but the law simply provides that in case air brakes are not used there shall be one brakeman to ride on the rear car of every train, but where air brakes are furnished, the law is inoperative, and of course air brakes are furnished, so the law amounts to nothing.

The law in Wisconsin does not touch the freight trains. The law in Nebraska mentions passenger trains, and only mentions one

class of freight trains. It provides that on main lines, on local way freight runs, where the run is over 100 miles in length, there shall be three brakemen, but the law does not cover through trains. It pays no attention to through freight trains. None of the 13 States has a law that would be so burdensome as this. I think it would have been very much better, if the law is necessary, to have incorporated in it the general practices of the good railroads, because we do think that the railroads generally of the country are trying to operate their roads safely and expeditiously. They have been trying to do that for a good many years, and I think if we are to have any law at all, the law should be based upon what is known as accepted good practice. I do not think, however, any law is necessary.

Mr. ESCH. Does the American Railway Association recommend any practices of that kind?

Mr. RICE. No, sir; not as to the number of men.

Mr. ESCH. They do not correspond, therefore, in their operation, to the master car builders with reference to the construction work? They do not set standards and agree to them?

Mr. RICE. Yes; they set standards with regard to a good many matters—with regard to rail, block signaling, interlocking, train rules, train dispatching, and all that sort of thing—but not as to the number of men. That is left to the railroads. They have never contemplated that. I have a little document here that contains quite a number of very excellent letters, representing the judgment of men from all over the United States, prominent men, whom I presume you all know. I have one here from Mr. Thomas, the gentleman Mr. Sims spoke of, and from several other men. There is a synopsis here of the different laws in the thirteen States. There are brief expressions, one short sentence or paragraph, from over 200, railroad managers, presidents, and vice-presidents on this subject. Then there is this data as to the cost, and a brief synopsis of the laws of the thirteen States, and some little further argument.

Mr. TOWNSEND. What class of railroad men are asking for this?

Mr. RICE. I do not know, but I think it is the organizations.

Mr. TOWNSEND. Not the engineers?

Mr. RICE. Oh, no; I mean the trainmen.

Mr. TOWNSEND. The brakemen?

Mr. RICE. The brakemen; yes.

Mr. TOWNSEND. Do you know whether the engineers and firemen are taking any action in the matter at all?

Mr. RICE. I understand they are not. I understand they are not in sympathy with it.

Mr. ADAMSON. Is it not universally true, from the very nature of the case, that the higher officers charged with the operating of a railroad are men who themselves have come up from the ranks of the lower employees, trained in the business?

Mr. RICE. Yes, sir.

Mr. ADAMSON. Are they not themselves the best calculated men on earth to discuss the question with the other employees and decide the best means of safety in running those trains?

Mr. RICE. I think so. I have been on the Burlington Railroad forty-seven years this coming July, and I have occupied every position from a switchman to the general superintendent. I think I have had as much to do with the employment of men as any man in the United

States, and have handled as many train crews and engine crews as any other man, and I have never yet had a single man on an engine or a train suggest to me that there ought to be more men. I never had that suggested to me. I never had an accident of any sort when any superintendent of any division, any man of the train, or any engine man ever said to me, "If you had another man that would not have happened."

Mr. RICHARDSON. In that connection, do you believe that the authorities of the railroad, those who have come up from the lower ranks to the higher positions, are better qualified to pass on the reasonable rate than anybody else?

Mr. RICE. I am only talking about men, you know.

Mr. TOWNSEND. Have you made any comparison, or has anybody, to your knowledge, made any comparison, as to the number of accidents that have occurred in any one of those five States, for instance, since it had the full-crew law as compared with the accidents which occurred before that?

Mr. RICE. No, sir; I have never seen any such comparison; but here are brief answers to a question from managers in the States where the laws are operative. Here is a question that was asked of railroads in these States where they have passed full-crew legislation. There are 23 general managers and officers who report that no increased safety has been secured, and that they regard the additional man that they have been obliged to employ rather as a nuisance; that he serves no good purpose.

Mr. TOWNSEND. Do you know of any place where the additional man, in those States which have the full-crew law, has been beneficial and averted accidents?

Mr. RICE. I never heard of one case.

Mr. TOWNSEND. You say you never heard complaint that an accident could have been prevented by an additional man?

Mr. RICE. I never heard that the additional man prevented any accident, and I have never heard anyone suggest, either among the trainmen themselves or among the officers, that an additional man would have saved the accident.

Mr. TOWNSEND. Have your men applied to you for this additional man?

Mr. RICE. No, sir; I never had a train crew or an engine crew or an organization, or any other body of my employees, ask for another man—I mean an additional man on a train.

Mr. TOWNSEND. Have your men talked with you about this particular kind of a law?

Mr. RICE. Yes.

Mr. TOWNSEND. What did they give as their reason for wanting it?

Mr. RICE. They say, "We do not need that extra man."

Mr. TOWNSEND. I mean have your trainmen talked with you?

Mr. RICE. Yes.

Mr. TOWNSEND. In favor of this law?

Mr. RICE. No; not a man. I have talked with our very best conductors and our very best brakemen, and asked their opinion upon it. I have handed them the bill. They have come to see me and talked it over, and they ridicule the idea.

Mr. TOWNSEND. So no men on your line want this law?

Mr. RICE. Of course, so far as I know, they do not.

Mr. HEBBARD. Does that apply to the brakemen? You say they ridicule it.

Mr. RICE. Yes; brakemen and conductors.

Mr. RICHARDSON. Who is it, then, that is seeking it?

Mr. RICE. Well, it is undoubtedly the leaders or the heads of the Brotherhood of Railway Trainmen.

The CHAIRMAN. We have had no one appear before us from that point of view, Mr. Rice.

Mr. RICE. But I was asked who I thought.

The CHAIRMAN. I was going to ask you this. Two of these bills have been introduced, one by Mr. Campbell, of Kansas, I believe, and one by Mr. Martin, of Colorado. Your road runs in Colorado, too?

Mr. RICE. Yes.

The CHAIRMAN. Is the situation out there on the mountain roads any different as to the number of men properly required to equip a train than on the level roads?

Mr. RICE. Our main line through Colorado to Denver is no different. It is practically level line, practically straight.

The CHAIRMAN. Then, this does not apply to your line?

Mr. RICE. This does not apply to our line.

The CHAIRMAN. What would you say as to those mountain lines?

Mr. RICE. Well, I have never had any experience on mountainous lines.

The CHAIRMAN. You noticed that a train ran away the other day out there and killed a lot of people?

Mr. RICE. Yes.

The CHAIRMAN. We have had representatives of the Denver and Rio Grande here several times, protesting that it was very difficult to control trains with air brakes, and so forth.

Mr. RICE. I have always understood that the mountainous lines are holding their trains by hand brakes very largely, and that they employ the number of men required, whatever that is.

The CHAIRMAN. I wondered whether the fact that this bill was introduced by a gentleman from Colorado might not direct attention to the difference between the number of men required on a mountain road and the number of men required on a flat road. The gentleman from the New York Central lines stated, I believe, that he voluntarily put on an extra man. I apprehend that most of the roads do not do that.

Mr. RICE. In the mountains?

The CHAIRMAN. Yes.

Mr. RICE. I think they do.

The CHAIRMAN. Well, he gave it as a very exceptional thing for him to have done.

Mr. LITTLEPAGE. I believe there is a gentleman here from one of those western roads who can give the committee all the information along this line they want, who operates trains there.

Mr. ADAMSON. If different local conditions make different degrees of necessity for this, would it be necessary for us to go further than to leave in the control of the Interstate Commerce Commission the regulation and the exception in those things?

Mr. RICE. If it needed regulation; but I can not imagine that a mountainous railroad can afford to run its trains downhill without having the necessary number of men to hold them.

Mr. HUBBARD. Without having as many men as this bill requires? Can you imagine they would do it without having as many men as are required by this proposed act.

Mr. RICE. No; I think they would have to have more.

Mr. ADAMSON. Then instead of a general law providing for all railroads, would it not be better to leave to the Interstate Commerce Commission the matter of excepting it where it was necessary?

Mr. RICE. Of course that would be preferable to a universal law.

Mr. ADAMSON. Would not that be as far as it was necessary for us to go?

Mr. RICE. I think it would.

Mr. ADAMSON. I have a question that I think is material that I want to ask you. What is the condition on the railroad as to those desiring to work throughout the country. Are those people generally who would take these positions generally employed, or are railroad people going without employment now, needing the positions?

Mr. RICE. Both. If this bill were enacted and became effective I think it would bother the railroads to get the number of men necessary.

Mr. ADAMSON. That is the point I am driving at.

Mr. RICE. I estimated that it would require the permanent employment of 20,000 additional men.

Mr. ADAMSON. Are you able to get all the men you need at present, or is there a surplus of men demanding employment that you could easily get?

Mr. RICE. West of the Missouri River we have trouble all the time in getting enough men to man our trains and in our yards. We have a little less trouble between the Missouri River and the Mississippi River, and a little less between the Mississippi River and Lake Michigan; but last week I spent the week between Chicago and St. Paul on the road, and I found that we were short of crews, that we had more enginemen and engines than we had crews. I asked what the trouble was, and they said they could not get men.

Mr. ADAMSON. Is there any part of the country where there is any great number of unemployed seeking for places of that character?

Mr. RICE. I do not think so. I do not know of any.

The CHAIRMAN. This is preliminary to a speech on how much we are suffering from the effects of the Payne tariff law. [Laughter.]

Mr. ADAMSON. I am reaching out to hunt for something else for this committee to do. [Laughter.]

Mr. RICE. Mr. Chairman, I would like to give each member a copy of this pamphlet.

The CHAIRMAN. What is it?

Mr. RICE. It is a memorandum of reasons why a full crew is unnecessary.

The CHAIRMAN. You have a printed document there. What is the printed document? Is it a copy of a publication? I heard your description of it. Is it some magazine?

Mr. RICE. Oh, no; it is just a cheap print of reasons why a few of us railroad men think this bill—

The CHAIRMAN. Is it something you got up yourself?

Mr. RICE. Well, not exactly.

The CHAIRMAN. Is it a publication?

Mr. RICE. No.

Mr. RICHARDSON. Do you mean you want to publish the whole pamphlet?

Mr. RICE. I do not mean to publish it at all. I thought if you would each like to have a copy I would furnish each member of the committee with a copy.

The CHAIRMAN. You may give that to the stenographer, and we will publish it in the hearings.

Mr. HUBBARD. I do not understand that the witness requested that. He simply asked that each member of the committee take one of them.

The CHAIRMAN. I know, but we had better publish it.

Mr. HUBBARD. I did not understand you, Mr. Rice, as to who prepared that.

Mr. RICE. I prepared that—that is, in this way: I was asked by several railroads to correspond with other railroads and ask them certain questions about the cost, and so forth.

Mr. TOWNSEND. But, as I understand you, you did not know how the question of the number of crews was determined?

Mr. RICE. No. Of course each railroad man would answer.

Mr. TOWNSEND. Of course it would not be of any use to us unless it was entirely reliable, and I assume that it must be.

Mr. RICE. It is, because the names are attached here. They are well-known people.

Mr. HUBBARD. It is simply the expression of the conclusions of these operating officers. They do not give the detailed statistics?

Mr. RICE. It is their conclusions, but they also give a memorandum of figures. I would like to leave this.

The CHAIRMAN. You may leave it with the stenographer, and we will publish it.

Mr. RICE. I think you will find the whole matter very interesting, gentlemen, and I would be glad to have you read it.

(The paper referred to is as follows:)

[Bulletin No. 3.]

CHICAGO, ILL., January 11, 1910.

MEMORANDUM OF REASONS WHY A FULL-CREW LAW IS UNNECESSARY, WITH LETTERS FROM A FEW WELL-KNOWN MANAGING OFFICERS, TOGETHER WITH A SUMMARY OF VIEWS BRIEFLY EXPRESSED BY A LARGER NUMBER OF MANAGING OFFICERS, REPRESENTING PRACTICALLY ALL SECTIONS OF THE UNITED STATES, WITH OTHER INFORMATION.

All roads report that the additional service contemplated by the employment of additional men is unnecessary to safety and that the additional men can perform no service which is not already being efficiently performed by the number of men at present employed under existing practice.

That the employees themselves have not made any request for additional men.

That the relations between the railroads and their employees are comparatively harmonious.

That the present laws are sufficient for the redress of all grievances.

That there is at present no general demand for such additional legislation.

Assuming that the argument of increased expenses is not in itself a sufficient ground upon which to oppose the passage of the proposed full-crew bill, it must be remembered that if such an expense is forced upon the railways it will result in a deflection of money now being expended for the improvement and development of railways for the public good under the direction of efficient managements to channels of expenditures which in no way will increase the safety of operation or the comfort or safety of the employees or the public.

It has never been suggested by anyone, including the Interstate Commerce Commission, that the number of men employed in cases of accident has been insufficient

to have furnished the proper protection to the trains concerned had the individuals designated performed their full duty, nor has it ever been claimed by anyone that there was no employee at hand to furnish the proper train protection.

In no single instance has any employee, officer, or commission ever suggested that an accident of any description has been due to lack in number of employees. It has, so far as experience and knowledge goes, always been due to the delinquency or negligence of an employee whose special duty it has been to perform a duty, and never that there was a lack in number of employees.

Few, if any, instances are known in which an engineman has passed a flagman's protection, properly placed, and ran into a preceding train.

No employee or officer has ever claimed a shortage of employees necessary to furnish train protection; the criticism has always been that the employee designated failed to perform his duty; in no single case would additional employees have furnished additional safety, on the other hand, in many instances, by duplication, they have and may fail to perform their specified duty by reason of divided responsibility.

There appears to be no provision in the full-crew bill that will contribute any additional safety to employees or travelers.

It is unnecessary and impracticable to enact any legislation regulating the number of employees to be engaged. The number of employees to be engaged on trains should and must be fixed by the officers who are responsible for and manage the trains, in contradistinction to simple employees, whose interests are personal convenience, with no responsibility for other than their individual acts.

The only possible interest the public can have in this bill is the prevention of accidents. If this bill does not accomplish this, the public must eventually suffer the waste of expenditure which it causes in increased cost of transportation.

It must be known to the Congress that the railroads generally have employed the highest degree of practical and scientific knowledge which they could call to their assistance for developing the greatest safety and economy in operation.

It must be known that the railroads have expended many millions of dollars and are expending millions more in reducing grades, in removing curvature, and in improving facilities for the purposes of safety and economy.

It must be known that the railroads generally are expending amounts of money beyond their financial ability for safeguarding the movement of their traffic.

The fundamental thought in the mind of every railroad manager is safety, then follows the advantages of expedition, public convenience, and public comfort.

The increase in comfort and luxury enjoyed by travelers over that of ten years ago could not be afforded except for the economies resulting from improvements in grades, in locomotive power, and car equipment. These economies are being actually absorbed by the increased cost of material, the increased payments to labor, and the restrictions imposed by legislation.

It must be fair to assume that, if the employment of an additional brakeman upon trains would contribute to safety, it is a measure the railroads would themselves quickly adopt.

The railroads employ the same number of brakemen upon freight trains, now that braking and control of the train is performed by the engineer, as formerly when brakemen were required to go over the tops of trains and control them by hand brakes at all hours and in all weather.

Since the advent of air brakes the through and classified freight train has become necessary.

By far the greater number of freight trains which are run are of this class and move from terminal to terminal with little or no work for brakemen to do, barring casualties.

Practically every railroad runs a class of train called local way freight, which does merchandise and switching work at stations. Very generally this class of train is furnished with three brakemen, not at all as an element of safety, but for the exclusive purpose of expediting the movement of the train.

There is another class of freight train called a through train, but which may set out cars and pick up cars at stations. This class of train is irregular and usually found on main lines and handled by crews running in a pool, who catch this class of runs only occasionally. A road assigning a regular crew to this class of train might, for the sake of expedition, but not for safety, assign a third brakeman to it.

F. C. RICE,
General Inspector Transportation,
C., B. & Q. Railroad.

AUGUSTA, GA., December 24, 1909.

Mr. C. A. WICKERSHAM,
President and General Manager,
Atlanta and West Point Railroad.

DEAR SIR: I want to invite your careful attention to what is known as the "full crew" bill (S. 1986), introduced at the first session of the Sixty-first Congress and referred to the Senate Committee on Education and Labor.

This bill is referred to as a bill "to promote the safety of employees and travelers upon railroads by compelling common carriers by railroads to properly man their trains."

All bills aimed at the regulation of railroads, especially those claiming to promote the safety of employees or the public, are popular. As a rule regulations that do promote the safety of railroad employees and the traveling public are wise.

Unnecessary regulations, especially regulations that involve heavy expenditures and unnecessary expenses and that do not promote the safety of employees or the traveling public are unwise. They are, first, a serious tax upon the traveling and freight-paying public; second, they seriously interfere with the operation of the railroads, and are, therefore, costly to the railroads, which, of course, means a further tax upon the public.

In the last few years, under the safety appliance acts, railroads have made enormous expenditures for automatic couplers and air brakes on all engines and cars, both passenger and freight, engaged in handling interstate traffic.

The practice of controlling trains with hand brakes has years ago been discontinued, except possibly on mountain roads, where hand brakes are freely used. The old practice of requiring train hands to ride out on the cars, for the purpose of applying brakes and assisting in the controlling of the train, has also been discontinued. All railroads, so far as I am advised, provide, in addition to the engineer, fireman, and conductor, for two train men, one known as a "flagman," who rides in the caboose with the conductor, and is for the protection of the rear end of the train, and the other known as a "train hand," who rides either in the caboose or on the engine. This man is used principally to change switches, to assist the conductor in examining the running gear of the train, and in cases of emergency to replace hot brasses, bursted air hose, etc. Twenty-five years ago there might have been some excuse for such a law; to-day there is none.

Just why this bill in question should be referred to as a bill "to promote the safety of employees and the traveling public," is hard to understand, unless it be that such references appeal strongly to lawmakers as well as the public, and it is safe to say that such references tend to argue the passage of such legislation, when as a matter of fact the full-crew bill has no other claim than in name to the right to be considered as a safety measure. To call it a measure for promoting the safety of employees and travelers, the railroads, if they are to voice any opposition to such a law, are at once placed in the unenviable light, apparently, at least, to those who are not fully posted, of objecting to regulations promoting safety. They are instantly, by the name, placed in the position of opposing a so-called "safety law" when without the name it is entirely possible that such a bill would die in the committee room, or else the promoters of such a measure would be required to give reasons why it should become a law, other than the mere claim, which is fallacious, that it is for the protection of the lives of our people.

The railroads, possibly more than any other interest, must give reasons why bills affecting their interests should not become laws, instead of those who introduce them being required to show why they should become laws, or why proposed legislation, affecting as it does the greatest interest in this country, should at least do more good than harm and should promote the welfare of the railroads and the interest of the public, rather than retard. The owners of the roads should be allowed to operate their property under reasonable and proper regulation and supervision, rather than have to do so under fixed laws that frequently are not only burdensome to the roads and to the public, but likewise to the employees.

The number of trainmen fixed in the bill for 3-car and 25-car trains is in accord with the present practice the country over.

When you consider the fact that a passenger train starting from a given point with any three cars, which is, under the proposed law, the maximum number that could be handled with the regular train force, could not en route to its destination pick up an additional coach in order to provide room for unexpected amount of business, or for any other purpose, you will appreciate how troublesome to the railroads, and to the traveling public, such a regulation would be.

Again, start a freight train with any 15 cars, with instructions to pick up at intermediate points ten more cars, making the maximum number that could be handled

without additional train hands, and you will, in a measure, understand how serious an interference with the conduct of the freight transportation of the country such a measure would become, when you realize that one more car could not be added, although that car might be perishable freight. This would mean the running of another train to move such car, or delay it to the next schedule of possibly twenty-four hours later. Bear in mind that by no possible method could railroad officials know what business would develop along the line of road during the day, and after a train had been dispatched from its initial point, and it is an every day occurrence that unexpected car-loads, frequently of perishable freight, are offered for movement which could not be moved under such law except at serious expense, inconvenience, and delay.

These examples surely indicate how impossible it is to operate the train service of the country by legislation.

On all low-grade roads a minimum load is much in excess of 25 cars.

In the last few years low-grade roads have been constructed at enormous cost per mile solely for the purpose of increasing largely the number of cars per train and thus decreasing largely the cost of transportation. And it is inconceivable that legislative bodies should actually consider the passage of laws that would enormously increase the cost of transportation without giving a return benefit.

Every train except those loaded to capacity at the initial point is expected to pick up loads to make up the capacity of the engine, and any interference by national law, fixing the number of trainmen to be used, would be a stop attended with the gravest danger to the commerce of the country, in which the shipping public are as much interested as the railroads, and I insist, without fear of successful contradiction, without giving the slightest additional protection to our employees or to the public.

It has been estimated, and the basis for the figures can be given you if desired, that it would cost the railroads of this country to comply with the Borah bill, \$20,000,000 annually. This means a tax upon the commerce of the land that must be borne by the traveling and shipping public. Such a tax, if it give a good return or protection to lives and property, might be properly considered, but if it does neither, then it is a burden that should be resisted as earnestly as our forefathers resisted the stamp act.

I hope very much that you will see fit to oppose the passage of such an unnecessarily burdensome law.

If I have not made my objections perfectly plain I will be pleased if you will give me an opportunity to discuss the matter at such time and at such place as you may name. I believe that you would do the public a distinct service by opposing such a measure.

Yours, very truly,

A. W. ANDERSON,
General Superintendent Charleston and
Western Carolina Railway Company.

MISSOURI PACIFIC RAILWAY COMPANY.

ST. LOUIS, Mo., March 2, 1909.

Hon. A. G. COCHRAN,
Vice-President and General Solicitor, St. Louis.

DEAR SIR: In the matter of Senate bill No. 55, forty-fifth general assembly of Missouri, entitled "An act to prescribe the minimum number of employees to be used in the operation of freight trains in this State and providing a penalty for violation of this act."

The only requirement of this bill wherein it differs from established practice is the compulsory employment of a third brakeman upon all freight trains regardless of any modern equipment of automatic couplers and air brakes when, as applied to the service of this company, such trains exceed 25 cars.

It has been the custom upon this road, as upon other similar lines of railways, to regulate the number of brakemen employed on freight trains to conform to the work that such trains have to perform. In working out these requirements it has become the practice to employ three brakemen on local freight trains which unload and load less than carload freight and do the station switching, also the switching to industrial tracks on their districts. Upon through freight trains which handle no freight in less than carloads and which perform no station switching, there is so much less work to be done that a crew consisting of a conductor and two brakemen is sufficient to promptly and efficiently perform all the duties that appertain to such trains.

The effect of this bill, should it become a law, would be either to reduce through-freight trains to 25 cars and continue to use the existing crews, or to continue making up such trains as at present and put on an additional brakeman. To reduce freight

trains to 25 cars would be an unnecessary limitation of the transportation capacity of railroads, and to increase the crew by the addition of a third brakeman in through-freight service would be an expense unnecessarily increasing the cost of transportation without any adequate improvement in the service. To employ a third brakeman on through-freight trains, as required by this bill, would involve an additional cost to this company in the State of Missouri of \$189,355.32 per annum.

It has been, and still is, the policy of the management of this company, along with other roads, to maintain its freight service to the highest degree of efficiency, to the end that it may give to the public the largest measure of satisfactory transportation, and thereby promote its own revenues.

Any reduction in the size of freight trains which can be efficiently handled is a limitation of transportation capacity that will lessen the ability of the railroads to serve, and the proposed reduction of through-freight trains to 25 cars, with what are now standard crews, would be hurtful to the community which the railway serves.

During the year 1907 the resources of the railroads of this State were taxed to their utmost capacity to move the freight offered for shipment, and it is to be expected that such condition will occur again when business resumes its normal volume. If the service of the railroads is to be developed to its highest degree of usefulness in the movement of the products of the farm, the mine, and of manufactories, the capacity of the roads for moving such traffic should not be unnecessarily hampered and limited as proposed in this bill; and if the best interests of the greatest number of citizens of this State are to be considered, the transportation capacity of the railroads should be enlarged and the train service made more efficient by every reasonable means which the skilled and experienced railway managements will suggest to that end. Any legislative enactment which, as in this bill, has for its purpose the limitation of the transportation capacity of a railroad, is diametrically opposed to the best interests of the State.

As to the practical necessity for the third brakeman it is my judgment that such a matter should properly be left to the managements of the roads to determine. The officers of the operating departments of the railways in this State, who have charge of such matters, are men with years of experience in train service and who know intimately and thoroughly all phases of that service and are the best judges of what is really necessary to be done in the assignment of men to that work in order to get the most efficient transportation service.

The labor organizations have for some years past been trying to get the brakemen assigned to through-freight crews increased from "two" to "three" trainmen, but such increase has not been granted by the railway managements for the reason that the "third" brakeman would not add to the efficiency of the crew, and the expense of such third brakeman would be an unnecessary increase in the cost of the service.

Aside from the increase of cost mentioned, there is no real physical necessity for the "third" brakeman on through freight trains, and the reduction of such trains to 25 cars is an unprogressive, backward proposition. More than thirty years ago, before the introduction of air brakes, it was the custom of western railroads to handle regularly and successfully through freight trains of 40 cars with two brakemen. In those days when the link-and-pin coupler was in general use the cars had to be coupled by hand, and when there were no air brakes—the stopping of trains being entirely in the hands of the train crew, who used hand brakes—the duties of brakemen were far more arduous than at the present time, as, in all cases when descending long grades, it was necessary for the brakemen to be out on top of the train regardless of the weather, to hold the speed of the train under control. Men employed as brakemen then performed the duties of the position in the true sense of the word and rendered willing and efficient service.

Since that time, however, at an enormous cost to the railroads, freight cars have been equipped with automatic couplers, locomotives have been equipped with air pumps and driver brakes, and freight cars have been equipped with automatic air brakes. As a result of these changes, the braking of freight trains is now entirely in the hands of the engineer, and the train line of compressed air, extending from the locomotive to the caboose, regardless of the length of the train, automatically applies the brakes to the entire train in case of a derailment or other casualty that would cause a separation of the couplings. As an outcome of these improvements in working conditions, brakemen at the present time are relieved completely of the most arduous duties they formerly performed; and instead of riding out on top of the train as they used to do, the forward brakeman rides on the locomotive, the rear brakeman in the caboose with the conductor, and frequently they make a trip over the road in through freight service with no more arduous duties to perform than for the forward brakeman to open switches when it is necessary to take sidings at meeting points, leaving them to be closed by the rear brakeman when the rear of the train has cleared the main line.

The work of setting out and picking up loads at junction points, which through freight trains are required to do, is an insignificant matter compared with the station switching which local crews have to perform, and the burden of this work upon the through freight brakeman is a light one.

Occasionally, in case of a derailment or the pulling out of a drawbar, or in case of a hot box, there may be some unusual work required of the trainmen for a short space of time; but taking the average of our freight service the number of such mishaps which occur are insignificant in a service which averages, as on this line, over 10,000 freight trains monthly.

With respect to flagging: This duty devolves primarily upon the rear brakeman. Upon rare occasions when it is necessary to flag at the front end of the train, the rules of the service require that the fireman shall flag the front end if the forward brakeman is otherwise employed. This arrangement gives the conductor the service of one brakeman for any miscellaneous work that is necessary to be done, and whenever the rear brakeman is relieved from flagging by the approach of a following train the conductor has the services of both brakemen. It has been found that this arrangement works advantageously and efficiently, as in cases where more help is needed than can be furnished by the train crew the section forces of the track department are always subject to call to give assistance; and when the work is too heavy for the men on the ground to handle, relief forces are dispatched from the division terminal to take charge, upon the arrival of which train crews are relieved from such duties.

To give some idea of the expenditures which have been made by the Missouri Pacific Railway Company to equip its freight locomotives and freight cars with automatic couplers and air brakes, the following information is given:

Automatic couplers:

| | |
|--------------------------|--------------|
| Freight locomotives..... | \$18,671.50 |
| Freight cars..... | 1,031,738.40 |
| Total..... | 1,050,409.90 |

Air brakes:

| | |
|--------------------------|--------------|
| Freight locomotives..... | 442,942.60 |
| Freight cars..... | 3,254,879.33 |
| Total..... | 3,697,821.93 |
| Grand total..... | 4,748,231.83 |

The effect of these expenditures has been to relieve trainmen of the most arduous part of their duties which they formerly willingly and cheerfully performed, and yet in this bill it is proposed that, regardless of any modern equipment of automatic couplers and air brakes, which have been provided at such great expense, the crew shall either be increased or the train reduced.

It is inconceivable to railway officials of experience in train service how such a request can be justified in the face of the physical conditions that obtain to-day as compared with those which existed a few years ago. If the railway service is to be developed in a manner to meet the public demand for economical and efficient transportation, the roads must be spared the burden of the unnecessary expense proposed in this bill, which will add nothing to the safety or efficiency of the service, and which, in the light of well-arranged working conditions, would be a wasteful extravagance.

I submit the foregoing of this case for your careful consideration, and express the hope that the proposed bill will not be passed.

Yours, very truly,

A. W. SULLIVAN,
General Manager.

—
ERIE RAILROAD COMPANY.

NOVEMBER 9, 1909.

Relative to the duties of extra men assigned to freight trains and light engines by reason of recent legislative enactment in the States of Ohio and Indiana; also as to the practical effect of the legislative increase in the number of men employed upon trains, etc.:

After the so-called "full-crew law" was made effective in the State of Indiana, a representative of this company was detailed to ride certain freight and passenger trains with a view of definitely ascertaining the exact duties of the extra member of train crews, and this was continued for over a week, in which nine different trains

were brought under his scrutiny, and in not one instance was it apparent that the presence of an extra man was the means of providing any factor of safety in excess of that attendant upon the regular crew.

The extra man in each case was clearly superfluous and simply made the mileage and received the compensation therefor, and the railroad company was detrimentally affected in that measure.

Excerpts from the reports alluded to above might prove interesting, and are quoted below for your information:

(1) "Rode passenger train from Huntington to Chicago. Extra brakeman rode in rear sleeper all the way; stepped off car at water stop; also stepped off rear of train when car was set off."

(2) "Rode freight train, Hammond to Huntington. Took siding at one point and extra brakeman closed switch while flagman called train clear of main track on telephone, conductor being on the engine. Balance of time extra man rode in the caboose and had nothing to do."

(3) "Rode passenger train Huntington, to Hammond. Extra brakeman rode in the rear car all the way. He stepped off and stood at rear while engine took water, and while doing station work."

(4) "Rode freight train, Hammond to Huntington. Extra brakeman rode on top of train part of the time and balance of the way rode in the caboose. No work performed by this extra brakeman during entire trip."

(5) "Rode passenger train Huntington to Hammond. Extra brakeman rode in rear car all the way. At water stop he turned crane for engine to take water. At Hammond he stood at rear end of car while doing station work."

(6) "Rode freight train. Extra brakeman rode on top of train over division. Work performed by this man on trip was that of assisting in disconnecting brake lever on one car and replacing air hose."

(7) "Rode freight train. Extra brakeman rode on top of train, with nothing to do. Head brakeman and flagman did all necessary work."

(8) "Rode express train. Extra brakeman rode in rear coach with balance of the crew and had nothing to do on the trip."

(9) "Rode freight train. Nothing whatever occurred on the entire trip requiring services of a third man, and had absolutely nothing to do."

The foregoing are but examples of the innumerable instances which might be cited to illustrate the useless presence of an additional man in the train crew.

During the period when only a limited number of cars were equipped with air brakes numerous accidents were attributable to the inability of brakemen to control the speed of trains, but at this day, when trains are equipped with 100 per cent air controlled from the engine, the value of the hand brake in moving trains is almost practically eliminated, and is limited to holding cars on side tracks. As a consequence, the labor required of brakemen has been reduced fully 75 per cent.

Brakemen no longer ride out on top of cars except when approaching yards, and as no action on the part of crews is necessary to accomplish the application of air brakes, it must be conceded that there is essentially nothing for the men to do while the train is in motion except to ride in caboose or engine of freight trains or in coaches of passenger trains, as the case may be. The work formerly required of brakemen in making up trains in yards has been almost entirely eliminated and is a thing of the past. Trains are now handled by yard switching crews and the only work required of brakemen on a train departing from a yard is to look over the couplings and air-brake connections and give the engineer the necessary signals to test the brake and, when everything is in proper order, to give the starting signal.

Upon arrival at a yard, the only work performed is to put signal lamps away and lock up the caboose. In the case of local freights, which perform work at way stations, all trains are provided with three or four brakemen, in proportion to the amount of work done on the trip, but no part of this work is in controlling the brakes while the train is on the road between stations or in providing any additional protection, as the men either ride in the engine or in the caboose.

We therefore contend that additional brakemen on a train will not in the slightest degree promote the safety of that train. On the other hand, three men riding in the caboose or engine will create conversation and gossip on other matters, which is liable to divert the attention of the one responsible man from his duties and in the end work disastrously.

The same general attitude applies with reference to extra men assigned to crews of light engines.

Yours, truly,

J. C. STUART, *General Manager.*

I understand a bill is before the Committee on Education and Labor the purport of which is to fix the number of men to be employed on trains.

The first provision is that on passenger trains of less than three cars an engineman, fireman, conductor, baggagemaster (if baggage is handled), and a flagman shall be employed. By way of explanation, I would say that on some roads flagmen are known as brakemen.

On the vast majority of roads in the South two-car trains are run, particularly on branch lines. Such trains are usually manned with an engineman, fireman, conductor, brakeman, and porter, the conductor or brakeman looking after the baggage. Another combination is to have an engineman, fireman, conductor, joint baggagemaster and express messenger, and porter.

Many trains are run without the slightest idea of their paying expenses, and to require that a baggagemaster must be employed if baggage is handled and a brakeman substituted for the porter, or one employed in addition to the porter, simply increases the deficit and in no way adds to the efficiency of the service.

While most roads run some two-car trains, particularly on branch lines, many branch-line trains are made up of three, four, and sometimes five cars, for we must provide for mail, baggage, and express, negro passengers, white passengers, and, in addition, a smoking compartment. Then, again, on such trains we find it quite an accommodation to our patrons to run through coaches from some points on branch lines to points on main line other than junction points with such branches. Deadhead equipment must also be handled; that is, getting cars to and from the shops, etc. On these trains the traffic in many instances could be handled in two cars. For instance: Out of Decherd we have a train composed of four cars—one car for baggage, mail, and express; two coaches for Fayetteville, and a through coach from Nashville to Huntsville. It is safe to say that all of the passengers in the three cars could, as a rule, be handled in one coach. The men who can handle a two-car train properly can handle a three-car train equally as well, be the train run over a branch line or a main line where business is light. By light business, I have reference to the number of trains handled. I have already shown our practice on branch lines with two, three, four, or possibly five car trains, i. e., that they are handled successfully, and have been for years, with a conductor, baggagemaster, and a porter, or a conductor, brakeman, and porter, the conductor or brakeman looking after the baggage. The truth is, we have been for years operating three, four, and five cars with a conductor, joint baggagemaster and express messenger, and porter.

The second provision of the bill, that is where trains consist of three or more cars, the crew behind the engine must be composed of a conductor, baggagemaster (if baggage is handled), flagman, and brakeman. As heretofore stated, the enforcement of this provision on branch lines would be very burdensome and would not add to the efficiency of the service. The same thing applies with equal force to main-line trains. We have for years been successfully operating trains of three to twelve cars, and even more, with a conductor, baggagemaster, brakeman, and porter, and I can not recall a single instance where an accident would have been averted had there been an additional man on the train, as the bill calls for. He would simply be a monument to idleness, setting a bad example.

Before leaving terminals and at most points where cars are taken on or set off, the air-brake hose, signal hose, steam-heat hose are coupled up, and the system, whether it be brakes, signal, or steam heat is tested by inspectors and not by trainmen.

As you know, brakes are handled from the engine without the assistance of the brakeman, or flagman, as they are sometimes called. As heretofore stated, the additional man would in no wise add to the efficiency of the service. He would only sit around in the way, and, to say the least, in a manner divide the responsibility, which on railroads is a dangerous practice.

As you are aware, it is almost the universal practice of roads in the South to employ a porter on passenger trains. The bill does not prohibit the employment of train porters, nor do I believe we could dispense with them, for the reason that we could not get white men who would act as brakemen to do the work of train porters. If I thought this at all probable I would have reason to believe that the advocates of the bill not only wish to force the roads to employ more men, but to drive the negro from the train service altogether.

The bill further provides that in case of freight trains with less than twenty-five cars, a conductor, one brakeman, and a flagman must be employed. This, I believe, is the universal practice. Many trains of less than twenty-five cars have a third brakeman, but these trains do a lot of switching en route and are what we term local or pick-up trains. The bill goes further and stipulates that where a train consists of twenty-five or more cars, a conductor, two brakemen, and a flagman must be employed. How absurd all this is. Here we have a train of twenty-four cars, many of them are

to be switched out on line of road and others taken on. As there are less than twenty-five cars in the train, only two brakemen are to be employed. On the other hand, we have a train of twenty-five cars, not one of which has to be switched out on line of road, nor has this train to pick up any additional cars, but we must have three men behind the engine besides the conductor. It is safe to assume, in fact we know, that the front brakeman is usually found on the engine while trains are in motion—95 per cent of the time, I should say—and the rear brakeman, or the flagman, is in the caboose. The extra man would either be on the engine, in the way, or in the caboose doing nothing.

The conditions under which trains are operated, even on the same division of the main line and the various branches of a system, are so varied that I do not believe any hard and fast rule can be applied as to the number of men to be employed on trains. It strikes me that the operating officials are the proper ones to determine just how many men should be employed under the various conditions.

As you are aware, there is a law requiring that 75 per cent of the air brakes on freight trains be operative. Our information is that a much larger percentage obtains, and as 75 per cent is ample to control trains, except on very heavy grades, $2\frac{1}{2}$ or 3 per cent and over, very little hand braking is required.

During heavy business periods it is with difficulty that the railroads are able to obtain sufficient men of experience. Now, to add to the number of employees, and that unnecessarily, makes the risk greater and the burden more irksome.

Negligence of employees, not the lack of safety appliances nor the proper maintenance thereof, is the cause of 80 per cent of all accidents on railroads.

Reports from 292 railroads, aggregating 228,801 miles, show that to comply with the so-called "full-crew" bill will cost such roads \$19,200,000 per annum, which is equivalent to a capital expenditure of nearly \$500,000,000. If the roads are forced to expend this amount for additional men, men who, in the judgment of operating officials, are not needed, the sum must be gotten either by increased rates or the withdrawal of a like sum from other expenditures. It would cost the Nashville, Chattanooga and St. Louis Railway approximately \$4,500 per month. I say to you candidly that the additional man is not needed and would not add to the safety of our patrons or employees or to the efficiency of the service in any manner, and that this money can be spent much more judiciously in the way of additional equipment, signals, better track, interlocking, depots, etc.

The proposed law is so entirely unnecessary that I am unable to sum up one argument in its favor. I can not imagine why such a bill was ever contemplated, except it be by the antagonistic element in the labor organizations, the idea with them being that if they can get the law passed the railroads will be forced to give employment to more men.

I trust, after giving this matter careful consideration, you will see your way clear to use your influence against the bill and to vote against it should it be reported upon favorably by the committee.

Yours, truly,

J. W. THOMAS, Jr.,
President Nashville, Chattanooga and St. Louis Railway.

The subject-matter of this bill under its original presentation, as offered by Representative Ryan on February 23, 1909, has been considered by the General Managers' Association of Chicago, and also by the General Managers' Association of the Southeast. As a member of the last-named association, I am somewhat familiar with the subject, but the General Managers' Association of the Southeast has as yet made no exhausted report, as I was advised as late as April 24 that the bill would hardly come up before next fall, and this question was to be considered at the next regular meeting of the association on June 11.

I would like to say in the outset that legislation of this character is extremely pernicious to our interests, absolutely uncalled for by the public at large, and of no seeming benefit to anyone beyond the possible satisfaction to the antagonistic elements inside of the various labor organizations. Therefore we are confronted with the very serious problem of undertaking an argument against a proposition that seems to us so unnecessary that by reason of its very simplicity it is difficult to explain to any body of men favoring such a proposition, and which could not have been conceived in the minds of practical operators of railroads.

The first section of the act provides that passenger trains containing less than 3 cars shall have a crew behind the engine of 3 men, consisting of 1 conductor, 1 baggage master, and 1 flagman. There are not many of our short trains on branch lines that have fewer men than specified in the law, but they are differently designated. The proposed act requires passenger trains carrying three or more passenger-equipment cars to have a crew of not less than 4 men behind the engine. Where our traffic is

heaviest, on the main line, we can comply with this law, as our crews are of necessity composed of more than the lighter runs, where three or more cars are handled in a train. It is upon these lighter runs where the burden will fall upon us—where there is no reason or necessity of increasing the number of men on the train--by reason of light traffic. We have many branch-line trains that are not paying propositions, and to add an unnecessary man to these trains would necessitate curtailment of the service. As has already been said by some one, a very serious objection to this, aside from the expense, is that in the event it becomes necessary to increase the number of cars in a passenger train en route, which train usually starts from its terminal with 2 cars, on account of our inability to secure an additional brakeman we would either have to inconvenience the public greatly or pay a fine of \$1,000. We have always been required by legislation to spend a great deal of money in equipping our trains with safety appliances. All our passenger cars are equipped with air brakes, and a brakeman on such trains is superfluous.

There is likewise very serious objections to provisions in section 2, applying particularly to freight trains. Normally our freight trains under 25 cars are equipped with one engineer, one fireman one conductor, one flagman, and one brakeman. This crew with modern appliances is ample for a freight train of any length. Each man is required to perform a specific duty and maintain a certain position on the train, and the additional man would be superfluous.

The word "brakeman," as outlined in the proposed law, is really a misnomer. Since the general institution of modern appliances the train is controlled entirely by air brakes and operated by the engineer, and there is no necessity for extra men to perform the duties of brakemen. Our through freight trains are supplied with a conductor and flagman, who ride on the rear of the train, and with a brakeman, who rides near the head of the train. The duty of the so-called "brakeman" is to transmit signals and throw switches, and we can not see where there can be any duties whatever for the second or additional brakeman to perform; certainly the addition of this man would in no way increase the safety of the train.

What I have said with respect to picking up cars en route and increasing the length of the train would apply with as great force to freight trains as to passenger trains. We might start from a terminal with less than a 25-car train and be compelled to decline movement of freight on account of inability to procure the extra man en route, or violate the law. To be unable to pick up such cars under the circumstances mentioned would not only increase our expenses by running extra trains, but would be a disadvantage to the shipping public, who always desire quick transportation.

Generally, I would state, the operation of such a law will greatly increase our expenses, as we can show in detail that it will cost us to put on the additional man prescribed in this act, on basis of trains being operated, \$7,710.40 per month, or \$92,524.80 per annum, without any measure of return for such an expenditure. To show just what an addition in expenses would amount to, the figures given you would represent about one-half of 1 per cent of our total operating expenses for one year. Our costs in operation have already been enormously increased by reason of federal legislation. I refer particularly to the acts of 1907, prescribing hours of service for trainmen and telegraph operators. Our lawmakers had but little conception as to how far-reaching those laws would be, which, to a great extent, has increased our compensation to employees in the way of overtime brought about in our endeavor to comply with these laws, and which overtime is not allowed by reason of actual service performed, but for extra service on account of trains which could not reach the terminals within exactly the limits prescribed by law.

In my experience of many years I do not recall a train accident that has occurred that might have been prevented had there been an additional man comprising the crew. It is unnecessary to state that in the daily operation of train service no one is better informed as to the necessity of insuring the safety of passengers and traffic than the officer who directs train movements and whose daily thought is to safeguard the public, his employees, and the property he represents.

In conclusion, I wish to state that we operate a great many fast through-freight trains, averaging about 34 cars per train. Years of experience has taught us what is necessary in the way of manning these trains. The law requires that 75 per cent of the cars in a freight train shall be equipped with air. Practically all of our freight trains carry full complement of air cars, and the possibility of need of brakemen, should the engine brakes fail on such trains between sidetracks or between stations, is too remote and would occur too seldom to necessitate the employment of the large number of extra men contemplated under the act.

Yours, very truly,

W. N. ROYAL,
General Manager Atlantic Coast Line Railroad Company.

[Public papers of Governor Hughes, 1907, at pp. 94 and 95.—Veto.]

ALBANY, June 15, 1907.

To the Assembly:

I return herewith, without my approval, assembly bill No. 455 (senate reprint No. 1338, entitled "An act to better protect the lives of railroad employees").

This bill provides that it shall be unlawful for any railroad company in the State of New York "that runs more than four freight trains in twenty-four hours" to run over any part of its road outside of yard limits any freight train composed of more than 20 cars with less than a full crew of 6 persons, to wit, 1 engineer, 1 fireman, 1 conductor, and 3 brakemen, or a light engine without cars without a crew composed of 1 engineer, 1 fireman, 1 conductor or flagman, when running a distance of 10 miles or more from starting point.

According to present practice freight trains are very generally operated with a crew of 5 persons, and the object of this bill is to compel the employment of an additional brakeman. The necessity for this is said to lie in the fact that without 3 brakemen the freight trains are insufficiently manned and that firemen are compelled to leave their places in all kinds of weather to throw switches when the 2 brakemen are required, respectively, to go ahead of and behind the train.

This bill, however, upon the facts developed before me upon the hearing and undisputed, is clearly unconstitutional. Such a measure should define the service required with suitable reference to circumstances and conditions so that the law would apply in proper cases and not otherwise. The bill takes no account of the difference between the different roads and parts of roads, in trackage and switching facilities, and of the fact that what may be necessary in the case of some railroads may be wholly unnecessary in others. In the case of the New York Central Railroad, it was shown that the trackage and switching facilities on its main line were of such a character as to make unnecessary the employment of a third brakeman in accordance with the provisions of the bill. This was frankly conceded by supporters of the bill.

To require the expenditure of a very large amount of money (estimated at several hundred thousand dollars annually) without necessity for the outlay is simply arbitrary exaction and a taking of property without due process of law. The bill does not refer its requirements to any proper standard of necessity or provide any criterion by which its proper application under varying conditions is to be determined. It contains an absolute requirement which, upon the facts conceded before me, can not be justified.

CHARLES E. HUGHES.

SOUTHERN RAILWAY COMPANY.

NOVEMBER 9, 1909.

Referring to full crew bill:

With passenger train crews consisting of conductors, flagmen, and porters, there is absolutely nothing for the additional man called for by the Indiana full-crew law to do except assist passengers on and off train. I have just learned that this law was changed and reenacted February 26, 1909, and became effective on proclamation of the governor issued about June 1, prohibiting brakemen from performing duties of baggage master, express messenger, or porters. I know of no duties the extra brakeman on freight trains other than locals can be required to perform which could not just as well be performed by other members of crew; on local freight trains where there is enough work the extra man is of service handling freight and assisting in switching.

Yours, truly,

C. H. ACKERT,
Vice-President and General Manager

MACON, Ga., December 3, 1909.

My attention has been called to the bill introduced in the Senate, on the 26th of April of this year, and referred to the Committee on Education and Labor. The bill provides that on trains consisting of more than 3 cars on passenger trains, or more than 25 cars on freight trains, there shall be employed a crew consisting of 1 engineer, 1 fireman, 1 conductor, 1 flagman, and 2 brakemen. The object of the bill purports to be "the promotion of the safety of employees and travelers upon railroads by compelling common carriers by railroad to properly man their trains." The effect of the passage and enforcement of such a law would be to increase the expense of operation

of all railroads, without adding a single element of safety to either passengers or employees. Our practice is to employ on through-freight trains, 1 engineer, 1 fireman, 1 conductor, and 2 brakemen. On local freight trains we employ an additional brakeman whenever the work becomes too heavy for the regular crew—I mean too heavy for the train to perform local service and get over the road within a reasonable time. The employment of an additional man does not promote the safety of the other men, but enables us to perform the work more expeditiously. It is simply a question of whether the saving in wages, fuel, and other expense of a delayed local train will compensate for the wages of the additional man. The switching of cars at stations can be performed as well by 2 men as by 3, and, indeed, 1 man would necessarily be idle, or at least superfluous, if he could not be used in unloading cars while the rest of the crew performed the switching service. But even in that rather unusual condition, it would be an economical question alone, and in no way affecting the safety of any employee. On the other hand, the employment of a useless or superfluous man would rather tend to lessen the efficiency of the entire crew.

Our through-freight crews consist of 1 engineer, 1 fireman, 1 conductor, and 2 brakemen. Their run of 93 miles is completed in less than five hours. The trains make only 2 stops, in addition to stops for coal, water, and railroad crossings. These 2 stops are for the purpose of setting out or picking up cars which have been previously placed to entail only the simplest switching movement, with very slight delay. The control of the train is entirely in the hands of the engineer, and only in case of failure of air pump, or its connections, would the brakeman be called upon to brake. His regular duties are confined to assisting in the 2 switching movements. In cases of derailment or minor accidents, an additional man might prove of some slight advantage, but if we ran our trains provided for every emergency we should carry a complete wrecking outfit on every train.

The additional expense to this company to comply with such a law would be in excess of \$2,500 per annum, or a tax of over 1 per cent on our gross freight revenue.

On our passenger trains we employ one engineer, one fireman, one conductor, one flagman, and one ticket collector. The latter was not appointed through compulsion, nor to promote the safety of passengers or employees. The compliance by the railroads of the country with the law regarding safety appliances on railroad equipment, while costing them millions of dollars, has eliminated not only many risks of accidents, but has eliminated the necessity for additional trainmen. The ready compliance by the railroads with all practical laws to insure the safety of its employees and passengers is an established fact. The sixteen-hour law, the cooperation of the carriers in the matter of insuring greater safety in the transportation of explosives and inflammables, and many other regulations and laws have received their cordial support, and this fact should be given careful consideration by the committee. The increased and increasing cost of operation of railroads without compensating increase of revenue should also be recognized in considering a measure whose only merit lies in its apparent good intentions. As a paving stone it might do, but as a law it would prove burdensome, inefficient, and impracticable.

I have touched upon the subject as affecting our little road. For the larger roads the burden would be a very serious one, and he is indeed shortsighted who puts in the way of any railroad any obstacle to its slow recovery from the recent depression, and thus prevents badly needed improvements and repairs which we have been unable to make. There is a ray of hope in the fact that the measure has been referred to the committee on education.

DECEMBER 4, 1909.

"FULL-CREW" BILL.

Before cars and engines were equipped with the modern vertical-plane or automatic couplers and air brakes, when the old link and pin couplers were in general use and the speed of trains was controlled by hand brakes, all of the couplings had to be made by hand, and the braking of the trains was also done by hand. Notwithstanding this, trains containing substantially the same number of cars as are handled to-day were operated successfully, the recognized crew for through freight trains being an engineer, fireman, conductor, brakeman, and flagman, making a total of five men per train. On local freight trains, where the loading and unloading by the train crew of a great deal of merchandise and other less than carload shipments was necessary, in addition to doing station switching, an additional brakeman was added, making a total of six men in a local freight crew.

Since that time the railroads, at an expense of many millions of dollars, have equipped their cars and engines (both passenger and freight) with vertical-plane or automatic couplers and air brakes, which relieve the train crews (both passenger and freight) of the greater portion of the work formerly required of them, and especially of the more arduous and hazardous portion of their duties, as it is now unnecessary for employees to go between cars when couplings are being made, and the speed of all trains is controlled by the engineer, who can apply the brakes on the engine and every car in the train simultaneously by turning a valve within his easy reach in the cab of the engine. Should the cars in a train separate, due to pulling out a drawbar or any other reason, the brakes on the entire train are instantly applied automatically.

Notwithstanding the fact that train crews have been relieved of at least 75 per cent of the work formerly required of them, there has been no general reduction made in the number of men employed, crews on through and local freight trains at present being as above stated. Crews on passenger trains in main line service usually consist of an engineer, fireman, conductor, baggageman, and flagman, and in many instances a porter in addition to the other men named.

To carry out the provisions of the full-crew bill would increase the cost of operating the railroads in the United States about twenty millions of dollars annually, which is equivalent to a capital expenditure of nearly five hundred millions of dollars. The expenditure of this amount of money for the purpose provided in the bill would not in any measure increase the safety or efficiency of train operation. Such large and unnecessary expenditures would prevent roads from making needed improvements in facilities and equipment from which the employees, the public, and the railroads would receive real benefit, and which it is incumbent upon the railroads to provide as fast as their resources will permit in order to keep apace with the requirements and furnish the transportation facilities which the country demands.

Nearly twenty years ago a railroad on which I was employed as superintendent of a very heavy division purchased some consolidation engines for use in freight service on a district where the grades and curvature were materially heavier than on other portions of the division. At that time but very few freight cars were equipped with either vertical plane or automatic couplers or air brakes.

A committee representing the train men urged the management to employ an additional brakeman on freight trains handled by the consolidation engines on account of their being able to handle longer trains than the engines which had been in service previously. The request was at first denied on the ground that the additional man was not needed, but finally, by reason of the committee urging the employment of the additional brakeman so strongly, the request was granted, with the understanding that it would be necessary for one brakeman to ride in the middle of the train constantly, otherwise his services could not be of any value even to transmit signals from one end of the train to the other, it being understood, however, that in cold or inclement weather the brakeman (the middle man), whose duty it ordinarily was to ride in the middle of the train, would be relieved at intervals by the head brakeman or the flagman, which arrangement was made.

It had been in effect but a few months when the same men who at first urged the employment of the additional brakeman voluntarily made the request that he be taken off and the practice discontinued, realizing that the services of an additional man were unnecessary. This was done, thereby reducing the freight train crew to what they formerly were and to what they are at present, i. e., engineer, fireman, conductor, brakeman, and flagman, a total of five men.

GENERAL.

I feel sure it is apparent that the railroads and the officers who are responsible for their operation are more vitally interested than anyone else can possibly be in maintaining a thoroughly efficient train service, and experience has demonstrated that the number of men necessary to properly man a train may be safely left with them

ATLANTA, December 30, 1909.

"FULL-CREW" BILL.

In the first place, the bill is really an attempt at class legislation, though it purports to be for the safety of employees and travelers. The real object is to "bulb" the labor market artificially, by requiring a statutory number of men in a crew greater than are necessary or are warranted.

It may be argued that the expense will come out of the pockets of the people in the long run, and that the railroads will only be temporary sufferers until such time as they can raise their charges for service to meet the extra expense, but as a citizen I want to record an earnest objection to any such principle.

Congress has required the use of air brakes, and at a tremendous expense same have been installed. With the installation of air brakes, the train is controlled from the engine, and brakemen, as such, are no longer needed. In other words, instead of modern conditions demanding additional men, the modern air brakes have largely eliminated the necessity for the brakemen as formerly employed.

Some figures have been compiled to show the total cost throughout the United States, and it is over twenty million dollars per annum. This sum, capitalized at 4 per cent, would be five hundred million dollars! In view of the urgent need for new lines, and enlargement of facilities of old, for which money must be obtained somewhere, this would be far from helpful.

The railroads are all working to the end that they may take care of the growth of the country from year to year, and some of the greatest authorities have pointed out that over a billion dollars will be necessary in the next ten years. Should they be forced to pay an unnecessary and uncompensated tribute of twenty millions per annum, you can see it would be a serious handicap in getting money to be put into the business.

Instead of being an added safeguard, an extra man would be a monument to idleness, and would prove a weakness. It is very necessary in dealing with men to center responsibility, and this additional man would divide it, and undermine discipline. The present crews usually have much idle time, and with another in the party it would be the most natural thing in the world for them to resort to forms of amusement to while away the time, which would tend to neglect and cause orders of various kinds to be overlooked.

Whenever it is necessary to have another man in the crew, in order to perform the duties, you can rest assured that it will be done without compulsion, as efficiency is the end for which we strive. It would be utter folly to operate a train undermanned, so that it could not be handled over the road in the best possible shape, both from standpoint of safety and performance of work. On local trains, for instance, an extra man is sometimes employed to facilitate the unloading of freight at way stations, while switching is being done. On through freights he would only be in the way—he could not ride on the engine to any advantage, nor are there any duties at the rear of the train not amply provided for by two men. It would be impracticable for him to ride in the middle of the train all the time, on account of the weather, as he would have to stay on top.

CHAS. A. WICKERSHAM,
Vice-President and General Manager.

[Extracts from full-crew laws enacted by different States as convenient information.]

ILLINOIS.

Brakemen on freight cars.

90. No railroad corporation shall run or permit to run upon its railroad any train of cars, for the transportation of merchandise or other freight, without a good and sufficient brake attached to the rear or hindmost car of the train, and a trusty and skillful brakeman stationed upon said car, unless the brakes are efficiently operated by power applied from the locomotive.

INDIANA.

Railroads—Freight-train crews.

SECTION 1. *Be it enacted by the general assembly of the State of Indiana,* That it shall be unlawful for any railroad company doing business in the State of Indiana that operates more than four freight trains in every twenty-four hours, to operate over its road, or any part thereof in the State of Indiana, or suffer or permit to be run over its road outside of the yard limits, any freight train consisting of more than fifty freight or other cars, exclusive of caboose and engine, with less than a full freight-train crew, consisting of six persons, to wit, one conductor, one engineer, one fireman, two brakemen, and one flagman, and it shall be unlawful for any such railroad company that operates more than four freight trains in every twenty-four hours to run over its road or any part thereof in the State of Indiana, outside of the yard limits, any freight train consisting of less than fifty freight or other cars, exclusive of caboose and engine, with less than a full freight-train crew for such a train, consisting of five persons, to wit, one conductor, one engineer, one fireman, one brakeman, and one flagman: *Provided, however,* That a light engine without cars shall have the following crew, to wit, one conductor or flagman, one engineer, and one fireman.

Passenger-train crews.

SEC. 2. That it shall be unlawful for any railroad company doing business in the State of Indiana to run over its road or any part of its road, in this State, outside of yard limits, any passenger, mail, or express train consisting of five or more cars with less than a full passenger crew, consisting of one engineer, one fireman, one conductor, one brakeman, and one flagman (said brakeman or flagman shall not be required to perform the duties of baggagemaster, express messenger, or porter); that it shall be unlawful for any railroad company doing business in the State of Indiana to run over its road, or any part of its road in the State of Indiana, outside of yard limits, any passenger, mail, or express train consisting of less than five cars with less than a full passenger crew, consisting of one engineer, one fireman, one conductor, and one brakeman (said brakeman shall not be required to perform the duties of baggage-master, express messenger, or porter).

NEBRASKA.

SECTION 1. [Railroad passenger crews.] That it shall be unlawful for any railroad company doing business in the State of Nebraska to operate or run over its road or any part thereof, or suffer or permit to be run over its road, or any part thereof, outside of the yard limits, mail or express trains carrying passengers, whose regular equipment consists of more than five cars, with a crew consisting of less than one engineer, one fireman, one conductor, one brakeman, and one flagman: *And further provided,* That passenger trains whose regular equipment consists of five cars or less may be operated with a crew consisting of one engineer, one fireman, one conductor, and one brakeman or flagman.

SEC. 2. [Freight crews.] That it shall be unlawful for any railroad company doing business in the State of Nebraska to operate or run over its road, or any part thereof, or to suffer or permit to be operated or run over its road, or any part thereof, outside of yard limits, any freight train which is not manned with a crew consisting of one engineer, one fireman, one conductor, and two brakemen: *Provided,* That main-line local freight trains running one hundred miles or more and carrying passengers, local merchandise, and doing station switching shall be provided with a crew consisting of one conductor, one engineer, one fireman, and three brakemen.

SEC. 3. [Exceptions to act.] Nothing in this act shall be held as applying to any case of disaster or disability of any member or members of the crew arising while out on the road between division terminals, or to relief trains, or to wrecking trains, where men are not available.

NORTH DAKOTA.

[Code, 1905.]

SEC. 4307. Number of train men.—It shall be the duty of every corporation operating a railway within the limits of this State which has not complete air equipment in good order on all rolling stock in use on said road to furnish at least two brakemen to each freight train consisting of forty-five cars, and it shall be the duty of said company to furnish an extra brakeman on said freight train for every ten cars or fraction thereof in

excess of said forty-five cars: *Provided*, That this section shall not apply to any train which has therein equipped with air brakes a sufficient number of cars to render hand brakes unnecessary in the ordinary stoppage of trains.

OHIO.

[Transportation Laws, p. 138.]

SECTION 1. *Unlawful for railroad company to run freight train with less than full train crew.*—That it shall be unlawful for any railroad company in the State of Ohio, that runs more than four freight trains in every twenty-four hours, to run over their road, or any part thereof, outside of yard limits, any through freight trains with less than a full train crew, consisting of five persons—one engineer, one fireman, one conductor, and two brakemen—except that a light engine without cars have the following crew: One engineer, one fireman, and one conductor or flagman when running a distance of more than twenty-five miles from starting point.

SEC. 2. *Unlawful to run passenger train with less than a full-train crew.*—That it shall be unlawful for any railroad company doing business in the State of Ohio to run over its road, or part of its road outside of the yard limits, any passenger train with five cars or less, carrying passengers, with less than a full passenger crew, consisting of one engineer, one fireman, one conductor, and one brakeman; for more than five cars, two brakemen; and on trains of more than two cars the said brakeman shall not be required to perform the duties of the baggage master or express agent while on the road: *Provided*, That nothing in this section shall apply to trains picking up a car or cars between terminals in this State, or to trains propelled by electricity.

TEXAS.

SECTION 1. That it shall be unlawful for any railroad company or receiver of any railroad company doing business in the State of Texas to run over its road, or part of its road outside of the yard limits, any passenger train with less than a full passenger crew, consisting of four persons—one engineer, one fireman, one conductor, and one brakeman.

SEC. 2. It shall be unlawful for any railroad company or receiver of any railroad company doing business in the State of Texas to run over its or part of its road, outside of the yard limits, any freight train, gravel train, or construction train with less than a full crew, consisting of five persons, one engineer, one fireman, one conductor, and two brakemen.

SEC. 3. It shall be unlawful for any railroad company or receiver of any railroad company doing business in the State of Texas to run over its road, or part of its road, outside of the yard limits, any light engine without a full crew, consisting of three persons, one engineer, one fireman, and one conductor: *Provided*, That nothing in this act shall be construed as applying in the case of disability of one or more of any train crew while out on the road between division terminals, or to switching crews in charge of yard engines or which may be required to push trains out of yard limits.

WISCONSIN.

[Laws of 1907.]

Full passenger crew, exemptions, section 1809r.—It shall be unlawful for any railroad company doing business in the State of Wisconsin to run over its road, or part of its road, outside of the yard limits, any passenger train with three cars or less with less than a full passenger crew, consisting of one engineer, one fireman, one conductor, and one brakeman; for more than three cars, two brakemen; and on trains of more than three cars the said brakemen shall not be required to perform the duties of the baggage master or express agent while on the road. Nothing in this section shall apply to trains picking up a car or crew between terminals in this State, or to trains propelled by electricity.

Freight crew, section 1809s.—It shall be unlawful for any railroad company in the State of Wisconsin to run over its road, or any part thereof, outside of yard limits, any freight train of three cars or more with less than a full train crew consisting of five persons, one engineer, one fireman, one conductor, and two brakemen.

Attention is called to the following information received from the different railroads in reply to the questions as to the necessity for the additional number of men contemplated by the "full-crew" bill.

**SUMMARY OF REPLIES TO INQUIRY AS TO ADDITIONAL COST ENTAILED BY THE PROPOSED
"FULL-CREW" BILL.**

| | Roads. | Mileage. | Amount. |
|------------------------------------------------------------------|--------|----------|-----------------|
| Number of roads replying..... | 166 | | |
| Mileage of roads replying..... | | 205,547 | |
| Additional annual cost of compliance with full-crew bill..... | | | \$18,328,302.32 |
| Other roads exclusive of Canadian and Mexican roads..... | 126 | | |
| Mileage..... | | 23,254 | |
| Estimated additional cost of compliance with full-crew bill..... | | | 1,953,336.00 |
| Total..... | 292 | 228,801 | 20,281,638.32 |

Summary of replies of estimated additional cost arising from the application of the bill:

| | |
|--------------|-----------------|
| Roads..... | 292 |
| Mileage..... | 228,801 |
| Cost..... | \$20,281,638.32 |

States in which full-crew legislation has been adopted, 13.

States in which full-crew legislation has not been adopted, 33.

Question 6. In your opinion, what will be the effect of the presence of an additional man on a train as proposed?

The consensus of opinion in replies to this question, by 211 railroads, is that the employment of the additional number of men proposed by the bill will not increase the safety.

That the increase in expense would effect a curtailment of service in every way possible to meet the additional expense, and, on the whole, and independent of the enormous increase in expense, it is thought that the additional men would result in decreased efficiency from the lack of necessary employment and from divided responsibility.

Railroads in States in which full-crew legislation has been enacted were asked to state the duties performed by such additional employees as had been assigned to passenger and freight trains and light engines as the result of legislative enactment.

Statement in which the additional men performed no service not readily performed by the number of men previously established: A. W. Sullivan, Missouri Pacific (Arkansas and Nebraska); G. L. Peck, Pennsylvania R. R. (Indiana and Ohio); Henry Miller, Wabash R. R. (Indiana); C. R. Gray, St. L. & S. F. (Texas and Arkansas); J. Kruttschnitt, Southern Pacific (Texas and Nebraska); S. M. Rogers, E., J. & E. (Indiana); H. E. Speaks, T. & O. (Ohio); J. H. P. Hughart, G. R. & I. (Indiana); R. H. Aishton, C. & N. W. (Wisconsin, North Dakota, and Nebraska); R. P. Dalton, C., C. & L. (Indiana); A. W. Trenholm, C., St. P. & O. (Wisconsin and Nebraska); M. W. Wells, Southern Indiana R. R. (Indiana); H. U. Mudge, Rock Island R. R. (Arkansas, Nebraska, and Texas).

Statement in which the additional men perform no practical service whatever: J. F. Holden, Midland Valley R. R. (Arkansas); G. E. Evans, L. & N. (Indiana); J. C. Stuart, Erie (Indiana); C. H. Ackert, Southern Ry. (Indiana); E. A. Gould, C., H. & D. (Indiana); F. W. Green, L. & A. (Arkansas); A. W. Johnston, N. Y. C. & St. L. (Ohio); P. H. Houlahan, T., St. L. & W. (Indiana); B. McKeen, Vandalia (Indiana).

Statement in which additional service necessary to safety is performed by the additional men, which, from experience, could not be performed by the present number of men employed. None.

**SUMMARY OF REPLIES AS TO PRACTICE OF RAILROAD IN THE NUMBER OF MEN EMPLOYED
ON TRAINS.**

1. What is the practice of your road with reference to the number of men employed on trains, where no legislation or other regulation has been interposed, under the following conditions:

(a) Passenger, mail, or express trains composed of less than 3 cars?

| | |
|-------------------------------------|-----|
| Roads employing 5 men..... | 112 |
| Roads employing 4 men..... | 85 |
| Roads varying from 3 to 6 men | 20 |
| Roads making no reply..... | 31 |

| | | |
|-------------------------------------------------------------------------------------------------------------------------------------|-----|-----|
| (b) Passenger, mail, or express trains composed of 3 cars or more? | | |
| Roads employing 5 men..... | 95 | |
| Roads employing 4 men..... | 24 | |
| Roads employing 6 men..... | 24 | |
| Roads employing 5 or 6 men..... | 22 | |
| Roads varying from 3 to 7 men | 46 | |
| Roads making no reply..... | 37 | |
| | | 248 |
| (c) Freight trains composed of less than 25 cars? | | |
| Roads employing 5 men..... | 150 | |
| Roads employing 5 men on through and 6 men on local trains | 47 | |
| Roads employing 6 men..... | 17 | |
| Roads varying from 3 to 7 men..... | 30 | |
| Roads making no reply..... | 4 | |
| | | 248 |
| (d) Freight trains composed of 25 cars or more? | | |
| Roads employing 5 men..... | 130 | |
| Roads employing 5 or 6 men on through and 6 men on local trains..... | 45 | |
| Roads employing 6 men..... | 18 | |
| Roads varying from 3 to 7 men..... | 23 | |
| Roads making no reply..... | 32 | |
| | | 248 |
| (e) Trains other than these described? | | |
| Roads employing 5 men on other trains—class not specified | 69 | |
| Roads employing 6 men on local or way freight trains not included in sec- tions (c) and (d)..... | 25 | |
| Roads varying from 4 to 7 men on different class trains..... | 64 | |
| | | 158 |
| (f) Trains consisting of the locomotive only without cars? | | |
| Roads employing 3 men..... | 118 | |
| Roads employing 2 men..... | 80 | |
| Roads employing 2 or 3 men..... | 17 | |
| Roads varying from 3 to 5 men..... | 14 | |
| Roads making no reply..... | 19 | |
| | | 248 |
| 2. Have you found the number of men employed on trains as above stated to be adequate— | | |
| (a) For safety of operation? | | |
| Roads answering yes..... | 245 | |
| Roads answering no..... | 0 | |
| Roads not replying..... | 3 | |
| (b) For efficiency of operation? | | |
| Roads answering yes..... | 245 | |
| Roads answering no..... | 0 | |
| Roads not replying..... | 3 | |
| 3. Has the number of men employed on any of your trains been increased recently under legislative enactment or other regulation? | | |
| Roads answering yes..... | 51 | |
| Roads answering no..... | 35 | |
| 5. If such increase has been made, has it resulted advantageously— | | |
| (a) In the direction of safety? | | |
| Roads answering no..... | 47 | |
| Roads answering yes..... | 2 | |
| Roads not replying..... | 37 | |
| (b) In greater efficiency? | | |
| Roads answering no..... | 46 | |
| Roads answering yes..... | 3 | |
| Roads not replying..... | 37 | |
| (c) In more satisfactory service? | | |
| Roads answering no..... | 46 | |
| Roads answering yes..... | 3 | |
| | | 37 |

BRIEF OF FEATURES OF STATE LAWS REGULATING THE NUMBER OF MEN TO BE EMPLOYED UPON PASSENGER TRAINS.

Arkansas: No road shall equip any of its passenger trains with less than a porter and 1 brakeman or flagman, except that the act will not apply with respect to trains of less than 3 cars.

Connecticut—1902: One brakeman for each car, but where air brakes are used 1 brakeman need be kept for every 2 cars. Commissioners are authorized to reduce the number of brakemen in case a road has adopted a system of brakes to be operated by the engineer. Commissioners may revise such permission.

October, 1909: Commissioners authorized after public hearing to change number of employees when in their opinion it will conserve public safety.

The only order of commissioners was in 1896, in the case of the New York, New Haven and Hartford, namely: Trains not exceeding 5 cars, 2 brakemen, including baggage master; not exceeding 10 cars, 3 brakemen, including the baggage master; not exceeding 15 cars, 4 brakemen, including baggage master.

Illinois: One brakeman on every 2 cars, unless the brakes are operated by power applied from the engine.

Indiana: Passenger trains of 5 cars or more, 1 brakeman and 1 flagman, neither to perform the duties of baggage master, express messenger, or porter. Trains of less than 5 cars, 1 brakeman.

Maine: One brakeman for every 2 passenger cars.

Massachusetts: One brakeman for every 2 cars.

Nebraska: With more than 5 cars, 1 brakeman and 1 flagman; 5 cars or less, 1 brakeman.

North Dakota: Law omits passenger trains.

Ohio: Five cars or less, 1 brakeman; for more than 5 cars, 2 brakemen. On trains of more than 2 cars, the brakeman shall not be required to act as baggage master or express agent. Law does not apply in cases of picking up cars between terminals.

Texas: No passenger train shall be run without 1 brakeman. Act does not apply in case of disability.

Wisconsin: Three cars or less, 1 brakeman; for more than 3 cars, 2 brakemen. On more than 3 cars brakeman shall not be required to perform duties of baggage master or express agent. Law does not apply where cars are picked up between terminals.

BRIEF OF FEATURES OF STATE LAWS REGULATING THE NUMBER OF MEN TO BE EMPLOYED UPON FREIGHT TRAINS.

Arizona: That it shall be unlawful for any such company referred to in section 1 of this act to allow any trains to be run on mountain divisions where the ruling grade is over 95 feet to the mile, unless there is a brakeman assigned to every 600 tons of such train while being handled on such grade.

Arkansas—1907: Requires trains of 25 cars or more to have 3 brakemen.

Connecticut—1909: Authorizes the commissioners to change the number of employees necessary in their opinion to conserve public safety or safety of employees.

Illinois: Requires 1 brakeman stationed on the last car of trains unless brakes are efficiently operated by power operated by the engine.

Indiana: Railroads operating more than 4 freight trains in every twenty-four hours with more than 50 cars, 3 brakemen. Less than 50 cars, 2 brakemen. Light engines, 1 conductor or flagman.

Maine: Omits freight trains.

Massachusetts: One brakeman for the last car of every freight train.

Nebraska: Two brakemen, except main-line local freight trains running 100 miles or more, carrying passengers and local merchandise, and doing station switching shall have 3 brakemen. Disability on road of any member of a crew exempts compliance.

Nevada: There is an act which requires that a full crew, consisting of not less than 6 persons—1 conductor, 1 engineer, 1 fireman, 2 brakemen, and 1 flagman—be employed within yard limits or on the road with any freight or passenger train of more than 50 freight, passenger, or other cars, exclusive of caboose and engine.

North Dakota: With a sufficient number of air brakes to render hand brakes unnecessary in the ordinary stoppage of trains, no requirements as to the number of men are made.

Ohio: In the case of more than 4 freight trains, through trains must have 2 brakemen. Light engines moving more than 25 miles, 1 conductor or flagman.

Texas: Two brakemen. Light engines, 1 conductor. Disability between terminals of any employee exempts compliance.

Wisconsin: Freight trains of 3 cars or more, 2 brakemen.

BRIEF COMPARATIVE SYNOPSIS OF STATE LAWS AFFECTING THE NUMBER OF MEN TO BE EMPLOYED UPON TRAINS.

NOVEMBER 27, 1909.

Number of States in which legislation affecting the number of men to be employed upon trains has been enacted, 13.

Number of States in which no similar legislation has been enacted, 33.

Thirteen States have adopted legislation regulating the number of men to be employed upon trains.

The laws in 4 of the 13 States are harmless or of no effect, because of the simplicity of their requirements.

One of the 13 States delegates the authority to regulate the number of men to be employed by its commissioners.

Two of the 13 States require 1 brakeman for every 2 cars on passenger trains. One of the 2 States omits freight trains; the other requires a brakeman on the last car of every freight train.

One of the 13 States requires 1 brakeman on every passenger train, 2 brakemen on every freight train, and 1 conductor with every light engine.

One of the 13 States requires 1 brakeman for every passenger train of 5 cars or less, and 2 brakemen for every passenger train of more than 5 cars. Two brakemen for every freight train, except certain specified main-line local freight trains, which shall have 3 brakemen.

One of the 13 States requires that passenger trains of 3 cars or more shall be equipped with 1 porter and 1 brakeman, and that freight trains of 25 cars or more shall be equipped with 3 brakemen.

One of the 13 States requires that passenger trains of 3 cars or less shall have 1 brakeman; for more than 3 cars, 2 brakemen. Freight trains of 3 cars or more shall have 2 brakemen.

One of the 13 States requires that passenger trains of less than 5 cars shall have 1 brakeman; with 5 cars or more, 2 brakemen. Roads operating more than 4 freight trains every twenty-four hours, with more than 50 cars, 3 brakemen; less than 50 cars, 2 brakemen. Light engines, 1 conductor or flagman.

One of the 13 States requires for passenger trains 1 brakeman for 5 cars or less; for more than 5 cars, 2 brakemen. In case of more than 4 freight trains each twenty-four hours, through freight trains must have 2 brakemen. Light engines moving more than 25 miles, 1 conductor or flagman.

Attention is called to the answers made by the different railroads to the question as to what would be the effect of the presence of an additional man on a train, as proposed by the "full-crew" bill.

IN YOUR OPINION WHAT WOULD BE THE EFFECT OF THE PRESENCE OF AN ADDITIONAL MAN ON A TRAIN AS PROPOSED?

Arizona and Colorado Railroad.—Of no benefit. (EPES RANDOLPH, president and general manager.)

Astoria and Columbia River Railroad.—The presence of an additional man on trains operated by this company would be of no advantage to ourselves or the traveling public. (J. RUSSELL, general superintendent.)

Atchison, Topeka and Santa Fe, eastern lines.—Additional cost without any advantages or additional safety to the traveling public or the carriers.

Atchison, Topeka and Santa Fe, western lines.—Would tend to cause further division of responsibility and further tend to cause each member of crew to be less attentive and alert as regards train movement and safety.

Atchison, Topeka and Santa Fe, Coast Lines.—Would be of no value and therefore a useless expense.

Atlanta, Birmingham and Atlantic Railroad.—An additional man on passenger trains would not be of any benefit, neither would it on through freights. More men on local or package freights would help in making time. (ALEX. BONNYMAN, general manager.)

Atlantic Coast Line Railroad.—As all our trains are controlled by air brakes, the additional man would have no duties to perform. (W. N. ROYALL, general manager.)

Au Sable and Northwestern.—Increased expense without increased efficiency. Have not killed a train employee in ten years. Employees are satisfied with amount of work. (F. H. LOUD, general freight agent.)

Baltimore and Ohio Railroad.—As the present crew is fully ample, an additional man would only be in the way, and also tend to divert their attention from their duties; also tend to divide the responsibility in case of accident. (G. L. POTTER, third vice-president.)

Baltimore and Ohio Southwestern Railroad.—Superfluous. (C. C. F. BENT, general manager.)

Baltimore, Chesapeake and Atlantic Railroad.—Not needed with us, nor would it improve the service in any way; excess number of men produces idleness and carelessness and detrimental to the safety of the service. (W. U. POLK, superintendent.)

Bangor and Aroostook Railroad.—Do not think an additional man would add to safety; would simply result in an additional man idling in the caboose. (W. M. BROWN, general superintendent.)

Bellefonte Central Railroad.—Add to expense without additional safety or efficiency. (F. H. THOMAS, general manager.)

Bessemer and Lake Erie Railroad.—It would increase the cost per train mile without any corresponding increase in efficiency. (E. H. UTLEY, vice-president and general manager.)

Boston and Albany Railroad.—No record of accidents due to insufficient number of men on a train. (A. H. SMITH, vice-president and general manager.)

Boston and Maine Railroad.—Large additional operating expense with no adequate return to the public or the railroad. (FRANK BARR, third vice-president and general manager.)

Buffalo and Susquehanna Railroad.—More conversation and card playing in caboose—less attention to business. (C. PETER CLARK, general manager.)

Buffalo Creek Railroad.—Every crew in our service handles during each day trains of less than 25 cars and trains of more than 25 cars; that is to say, of from 1 to 60 cars. It would therefore be necessary that each crew be composed constantly of 6 men, instead of 3 as at present. This would practically double our expenses on account of conductors and brakemen, adding about \$40,000 to our annual expenses and necessitating an increase of our rates. It would be impossible to keep all of the members of such a crew usefully employed. The employment of an unnecessarily large force of men, resulting inevitably in the idleness of a part of them, begets laziness and inefficiency. Moreover, every unreasonable concession by the public authorities to the demands or prejudices of railroad employees, organized or unorganized, creates in them a feeling of independence of their employers, encourages and cultivates lawlessness and insubordination, destroys discipline, and is a most prolific source of accidents. The result, therefore, would be an immense increase in the cost of railroad operation, which must ultimately be transferred to the public, the impairment of discipline, and a further decline in the efficiency and safety of train service. (E. F. KNIBLOE, general agent.)

Buffalo, Rochester and Pittsburg Railroad.—Would result in an increased expense to this company of approximately \$40,000 per annum, based on present volume of business, and without effecting any increased efficiency in operation. (W. T. NOONAN, vice-president and general manager.)

Butte County Railroad.—Entirely superfluous, except in cases where we handle 6 to 8 empty flat cars with our regular passenger train of 2 coaches. The run is 32 miles up grade, and one more brakeman on such trains might be advisable, but we do not consider necessary from standpoint of safety.

Canadian Northern.—Do not think an additional man would result in greater efficiency.

Canadian Pacific Railroad.—No benefit. (J. W. LEONARD, general manager.)

Carolina and North-Western Railway Company.—As far as our road is concerned, owing to excessive grades and curves, we never handle as much as 25 cars in a train. We are using the number of men as provided in the bill for passenger trains. At the same time it would be a great annoyance and add considerable confusion and risk in moving a train if a man suddenly took sick, or for any reason we are unable to get one man in position to move a train, and render us liable to fines under such a law. If such a law is passed, it should have very broad exceptions. (L. T. NICHOLS, general manager.)

Carolina, Clinchfield and Ohio Railroad.—Simply to increase the cost of operation without increasing efficiency or safety. (M. J. CAPLES, vice-president and general manager.)

Central Indiana.—Increase the cost of operation and create greater demand for train men. (JOS. ROBINSON, president.)

Central New England.—Unnecessary expense, with no greater efficiency or safety of operation. (O. M. LAING, superintendent.)

Central of Georgia Railroad.—Additional expense. (T. S. MOISE, general manager.)

Central of Pennsylvania Railroad.—An additional expense without increased safety or efficiency of operation. (W. H. GEPHART, president and general manager.)

Central Railroad Company of New Jersey.—To put an additional man on trains as proposed would mean placing another rider on the train and impose a burden of expense from which we would receive no adequate return in service performed. Not only that, the man would probably be in the engine or caboose diverting the attention of the other men from their legitimate duties, and would be rather a detriment than a benefit to the service. (W. G. BESLER, vice-president and general manager.)

Central Vermont Railroad.—An unnecessary expense without increased efficiency. Trains now have as many men as twenty years ago, when hand brakes were used. (G. C. JONES, general manager.)

Chattahoochee Valley.—It would be an unnecessary expense. Our present force is ample. (J. A. AVARY, general manager.)

Chattanooga Southern.—There would be nothing for him to do. (C. HICKS, superintendent.)

Chesapeake and Ohio Railroad.—Undesirable account not needed, and additional expense without equivalent benefit. (C. E. DOYLE, vice-president and general manager.)

Chicago and Alton Railroad.—Would be of no benefit whatever in the handling of our trains. (P. H. HOULAHAN, general manager.)

Chicago and Eastern Illinois Railroad Company.—An additional brakeman on freight trains is a detriment, as it is difficult to compel him to ride on the center of the train, which results in his either riding in and overcrowding the engine cab, or in the caboose, in either of which places he is of little, if any, benefit, especially with practically 100 per cent of the cars in trains equipped with air. On passenger trains the extra brakeman is a supernumerary, having practically nothing to do. (H. I. MILLER, president.)

Chicago and Northwestern Railway Company.—There would be no gain in safety or efficiency. There are passenger trains of more than three cars and freight trains of more than 25 cars, and on way freights, where additional men are frequently put on, not as a matter of safety, but to facilitate the work of movement of train, which is purely an operating proposition. The rules and practice provide that safety by flagging is first duty, and this is provided for whether there is one brakeman or a dozen on a train. (R. H. AISHTON, general manager.)

Chicago and Western Indiana Railroad.—It would decrease rather than increase the efficiency of the train crew. (J. M. WARNER, general manager.)

Chicago, Burlington and Quincy Railroad.—Passenger trains are classed as follows: Strictly branch lines, on which trains of three cars or less are moved, employ 5 men, namely, engineer, fireman, baggageman, conductor, and 1 brakeman. On branch lines but few trains are run, but few meeting points are made, and the act of flagging is very seldom required. This number of men is amply sufficient. On minor main lines, trains consisting of 3 or more cars, 5 men are employed, namely, engineer, fireman, baggageman, conductor, and 1 brakeman. On minor main lines the number of train movements is small, the number of meeting points is small, and with the block protection provided, the act of flagging is seldom required. This number of men is amply sufficient. Principal main line trains, consisting of from 3 to 5 cars in accommodation service, employ 5 men, namely, engineer, fireman, baggageman, conductor, and 1 brakeman. On principal main lines, embracing both single and double track, trains composed of from 3 to 5 cars performing accommodation service are so amply protected by block and interlocking signals as to make the act of flagging very infrequent. One brakeman, authorized to act as flagman in case of necessity, is sufficient. Trains consisting of 5 or more cars in through train service, with the heavier traffic, employ 6 men, namely, engineer, fireman, baggageman, conductor, 1 brakeman, and 1 flagman. Do not know what useful disposition could be made of the sixth man, or additional brakeman, on freight trains. There is no room for him to ride on the engine. Three men stationed in the caboose are no better lookouts than two, and as 2 men are qualified and can amply perform all the functions which experience requires for the rear protection of trains, the introduction of the third man in the caboose is superfluous and would not increase the safety; on the other hand, this number of men associated together, from lack of employment, will be more apt to acquire indolent, drowsy, and dangerous habits. If the purpose of the additional man is to increase the safety, he should be stationed near the middle of the train and ride on the top of the train. For the greater part of the year the weather will make this impossible, and even though it were possible, as our trains are now equipped with air brakes and the braking exclusively performed by the engineman, there are no duties for the additional man in the middle of the train to perform. As there are no duties at the rear of the train not amply provided for by 2 men, as he can not ride in the middle

of the train and can perform no useful service if he were able to ride there, and as he can not ride on the engine, his presence in the caboose, the only place left for him to ride, is simply beyond what has been and is now thought essential and necessary by our most experienced and practical railroad men. He could answer no valuable purpose. He could not advance the safety proposed in the bill. His employment would be an unnecessary expense. (D. WILLARD, second vice-president.)

Chicago, Cincinnati and Louisville Railroad.—Increased expense of operation. (R. P. DALTON, general superintendent.)

Chicago Great Western Railroad.—Under normal operation the presence of an additional man would be of no advantage. Under emergencies one additional man would be an advantage in the same sense that it would be an advantage to have a wrecking crew on every train. (O. CORNELISEN, general superintendent.)

Chicago, Indiana and Southern.—Useless expense and no beneficial results.

Chicago, Indianapolis and Louisville Railroad.—Any contemplated measure to increase number of men in train crews including present regulations appears to be extreme and unnecessary and tends to an unwarranted increase in expense and burden to the railroads. (W. B. JONES, superintendent of transportation.)

Chicago, Milwaukee and St. Paul Railroad.—Increase in expense without any corresponding benefits. (D. L. BUSH, general manager.)

Chicago, Rock Island and Pacific Railroad.—The presence of an additional man on trains as proposed will have no effect as far as safety is concerned, as present crews amply protect it. (H. U. MUDGE, second vice-president.)

Chicago, St. Paul, Minneapolis and Omaha Railroad.—No benefit would be derived, as experience has amply demonstrated that present complement of train crews is adequate and satisfactory. (A. W. TRENHOLM, general manager.)

Chicago Terminal Transfer Railroad.—He would be a "dead head," a nuisance entirely unnecessary. Much more so now than before, except in case of way freights having much merchandise to handle and local switching to do. (J. L. NICHOLS, superintendent.)

Cincinnati, Bluffton and Chicago.—An unnecessary appendage. It would in some cases be a detriment; too many men on the train. (J. C. CURTIS, receiver and general manager.)

Cincinnati, Hamilton and Dayton.—Detrimental because useless. (E. A. GOULD, general superintendent.)

Cincinnati, New Orleans and Texas Pacific Railway.—The number of men at present employed, as above mentioned, is amply sufficient to perform all the duties which devolve on engine and train crews; increase in the number of men would, in a measure, divide the responsibility, would not increase the safety or efficiency of train operation, but would possibly, in many cases, have the opposite effect. (H. BAKER, general manager.)

Cleveland, Akron and Columbus Railroad.—To place one more man on the train who would do nothing. (W. B. WOOD, superintendent.)

Cleveland, Cincinnati, Chicago and St. Louis.—To increase the operating expense with no benefit to the service.

Coal and Coke Railroad.—I consider that having more men than necessary decreases the efficiency and therefore the safety of operation. (A. M. SMITH, general manager.)

Colorado and Southern Railroad.—The presence of an additional man on a train as proposed would, in my opinion, under circumstances which we operate, be superfluous. (J. D. WELSH, general superintendent.)

Colorado Midland Railroad.—Increasing expense of operation without adding to safety or greater efficiency. (G. W. VALLERY, general manager.)

Copper Range Railroad.—Entirely unnecessary; only additional expense. (R. T. MCKEEVER, vice-president and general manager.)

Cornwall and Lebanon Railroad.—Being unnecessary from any reasonable viewpoint, it would be of no advantage. (A. D. SMITH, president and general manager.)

Corvallis and Eastern Railroad.—See Oregon Railroad and Navigation Company.

Coudersport and Port Allegany Railroad.—On short passenger trains would be in the way, and with good air on freight trains he is of no use for safety, but a large expense. (B. A. MCCLURE, general superintendent.)

Cumberland and Pennsylvania Railroad.—Unnecessary under working conditions of our road. (C. I. BRETZ, general manager.)

Cumberland Valley Railroad.—It will be an unnecessary expense without corresponding advantage to either the public or the railroad company, and would not add to the safety of operation. (M. C. KENNEDY, vice president and general superintendent.)

Delaware and Eastern Railroad.—Not warranted or necessary by the business handled on our line. (O. F. WAGONHORST, general superintendent.)

Delaware, Lackawanna and Western Railroad.—It would simply mean an increase in pay-roll expense, as shown on attached statement, without providing an addi-

tional safeguard to either the traveling public, the employees themselves, or the company's property. Should the engineman lose control of a train consisting of loaded cars on a heavy descending grade, acceleration of speed would be so rapid that the extra man would be of little or no service in stopping the train. An accident of this kind can only occur when an angle cock has been turned near the head portion of the train. To eliminate this possibility, all our freight trains must stop before descending heavy grades to enable the crew to test air brakes and turn up retainers which they are required by rule to do. (T. E. CLARKE, general superintendent.)

Delray Connecting.—Could not use any more men on crews as switchmen.

Denver and Rio Grande Railroad.—Additional man not necessary. (H. W. CLARK, general manager.)

Denver, Northwestern and Pacific Railroad.—None other than to increase the expense of operation. (W. A. DEUEL, general manager.)

Detroit and Mackinac.—Less efficiency, especially with brakemen.

Duluth and Iron Range Railroad.—No advantage. (F. E. HOUSE, president.)

Durham and Southern.—An additional expense, not justified. (E. THOMASON, assistant to vice-president.)

Elgin, Joliet and Eastern Railroad.—Increase expenses and afford no benefit to the service so far as this road is concerned. (S. M. ROGERS, vice-president.)

El Paso and Southwestern Railroad.—Increase in operating expenses without compensating benefits being derived. (H. J. SIMMONS, general manager.)

Erie Railroad.—The effect would be detrimental, both as to safety and efficiency. (J. C. STUART, general manager.)

Erie and Michigan Railroad.—Less efficiency, especially with the brakemen. (C. W. LUCE, general superintendent.)

Evansville and Terre Haute.—See Chicago and Eastern Illinois.

Farmers' Grain and Shipping Company.—Would do no good whatever. (P. S. DUNN, manager.)

Fitzgerald, Ocilla and Brorton.—Any men in excess of five would be in the way. It would reduce instead of increase efficiency.

Florida Central Railroad.—An unnecessary expense. (J. H. DAVIDSON, superintendent.)

Florida East Coast Railroad.—Additional man not needed. (J. P. BECKWITH, vice-president.)

Fort Smith and Western Railroad.—Simply to increase our expense about \$10,000 annually with no advantage whatever to the public or railroad. (Wm. BUSHNELL, general manager.)

Fort Worth and Denver City Railroad.—An additional force on our freight or passenger trains would be an unnecessary expense and would not result advantageously in any way. (D. B. KEELER, vice-president.)

Gainesville Midland Railroad.—An added expense with very little gain in efficiency; entirely unnecessary in our case. (E. B. EPES, general manager.)

Georgetown and Western.—None at all, as we do not need any additional men.

Georgia and Florida Railroad.—Additional expense and services unnecessary. (J. M. TURNER, general manager.)

Georgia, Florida and Alabama Railroad.—Of no service. (J. E. TUSSEY, general manager.)

Georgia Railroad.—Would not increase safety or expedite movement of trains. (W. S. BRAND, superintendent.)

Georgia Southern and Florida Railroad.—An unnecessary increase in expense. (O. M. GRADY, general superintendent.)

Gila Valley, Globe and Northern Railroad.—Additional expense without compensating betterment to men or employees. (C. C. MALLARD, superintendent.)

Grand Rapids and Indiana Railroad.—Do not think additional man necessary. Would materially increase the expense without beneficial results. (J. H. P. HUGH-ART, vice-president and general manager.)

Grand Trunk Railroad.—We can not conceive of any service that the additional man would or could render that would add to the efficiency or safety of operation. (C. M. HAYS, second vice-president and general manager.)

Great Northern Railway Company.—Would simply add another man who would be of no use on the majority of freight runs. On heavy way freights we could put on the third man to assist in handling freight and to protect the trains. On through runs there is but little work to be done by the three trainmen; practically none after leaving terminals, except when meeting other trains and being passed by superior trains. (J. M. GRUBER, general manager.)

Gulf and Ship Island Railroad.—We think our present number of men sufficient; any more would be a burden and unnecessary expense. (THOS. P. HALE, second vice-president.)

Gulf, Colorado and Santa Fe.—Increase in expenses without any corresponding benefit.

Hocking Valley Railroad.—Increase in cost of operation with no returns either in efficiency or service. (N. MONSARRAT, president.)

Huntingdon and Broad Top Mountain Railroad.—Not necessary, and expensive to us. (C. M. GAGE, vice-president and general manager.)

Illinois Central.—The presence of an additional man on trains simply means an increased cost of operation with no greater efficiency from a standpoint of safety or in character of service.

Illinois Terminal Railroad.—The additional man would be a dead expense without any resulting advantage, either in greater efficiency or factor of safety. (H. H. FERGUSON, vice-president and general manager.)

Indianapolis Union Railroad.—We have experienced no trouble in operating our trains, consisting at times of as many as 60 cars, with conductor and two brakemen. (A. A. ZION, superintendent.)

Jamestown, Chautauqua and Lake Erie Railroad.—Would not be needed on this line; it would cause hardship and extra expense to this company. (H. A. MACBETH, general agent.)

Kanawha and West Virginia Railroad.—An increased cost in operating which we can not afford. (C. E. FULTZ, general manager.)

Kansas City, Mexico and Orient Railroad.—None, unless to make each man assume less responsibility. (E. DICKINSON, vice-president and general manager.)

Kansas City Southern Railway.—The objections to this bill are:

1. There is no necessity for a third brakeman on freight trains. The general practice has always been to employ only two brakemen. This was true of the days of the link-and-pin couplers and the hand brakes.

2. A third brakeman on a freight train would be the fifth wheel in the organization. According to present practice, one brakeman now rides on engine and one in caboose with conductor. A third man would be in the way, both as to his position on train and as to his necessity.

3. In the days of link-and-pin couplers and hand brakes, trains were controlled by the brakemen. At present trains are controlled by the air brake, which is operated on all roads by the engineer, and on a great many roads by the conductor also. There is no occasion for the brakeman to get between cars to couple them. The men now used on through freight trains are misnamed brakemen, as they do no braking. They are emergency men used for flagging, etc.

4. When the Interstate Commerce Commission directed 50 per cent of all equipment used in interstate trains be equipped with air brakes there was a great demand for positions as brakemen on freight trains. Even firemen, whose positions were considered better than those of the brakemen, asked for places as brakemen, their reason for desiring the change being that the brakeman's was a gentleman's job, whereas a fireman had to shovel coal all the time he was on duty.

5. It is the practice on the majority of roads at present time to have three brakemen on way trains. This third brakeman is for the purpose of expediting the loading and unloading of freight and doing station switching. On some roads where business is not heavy two brakemen are used; on other roads where business is heavy only at certain seasons a third brakeman is used as needed. Provision for this third brakeman when needed is contained in agreement with train men.

6. On heaviest grades brakemen are not used to hold train, as this can be done better by the air brake.

7. Committees representing train men have never asked the railway management for a third brakeman on through freight trains, indicating they themselves do not think it necessary.

8. A third brakeman is not necessary on freight trains for flagging purposes. Since the use of the torpedo and the fusee all trains can be amply protected with present number of men.

9. So-called "full-crew" bills have been introduced into legislatures of various States. The Texas law, which was declared unconstitutional, provided for two brakemen on a train. The laws in Ohio and Indiana provide for the same number. The Arkansas law, which is now being contested, provided for three brakemen on a train of 25 cars or more. The bill before the Kansas legislature provides for two brakemen, which is in accord with present practice. A bill similar in nature was passed in the New York legislature, but was vetoed by Governor Hughes. On the Erie Railroad, between Hornell, N. Y., and Susquehanna, Pa., a distance of 140 miles, 85 loaded cars are frequently handled in one train with two brakemen, and they are sufficient in number to properly protect the train.

10. In the last fifteen years the weight of cars and the carrying capacity of cars have greatly increased. While the weight and tractive power of engines have also increased, they have not increased in the same proportion as the weight and carrying capacity of cars. The result is that while trains are a great deal heavier at the present time than fifteen years ago, they are not so long as they were then, on account of the increased weight of car and contents. With a shorter train, with automatic couplers and air brakes, the work of the brakeman is considerably lighter at the present time than it was when link-and-pin couplers and hand brakes were in use.

11. In considering whether a third brakeman should be put on freight trains regardless of the length thereof it seems that only two points should be taken into account, namely, that of safety and expediting movement of trains. In neither case is a third man needed. Two brakemen are sufficient to perform all of these duties satisfactorily, and then they will not be employed all of their time.

12. Careful inquiry has demonstrated the fact that there is no record of accident having occurred by reason of there being but two brakemen on through freight trains.

13. The real object in presenting this bill is to secure more places for train men. On the Kansas City Southern road the cost of the third brakeman in the State of Missouri would approximately be \$50,000 a year. The Kansas City Southern Railway has 192 miles in Missouri. Fifty thousand dollars represents 5 per cent on \$1,000,000. With this \$50,000 per year automatic signals for the entire mileage in Missouri could be erected in three years. (C. C. RILEY, superintendent transportation.)

Kansas Southwestern Railroad.—Of no benefit. Now have two men with engine to do switching, and conductor with station force handling merchandise. (E. L. KINGSBURY, president and general manager.)

Lackawanna and Wyoming Valley.—As far as our service is concerned, it would only add to the expense and not to the efficiency.

Lake Shore and Michigan Southern.—The additional man would not contribute to greater safety or efficiency.

Laramie, Hahns Peak and Pacific.—Simply increase cost of operation by adding one additional man to mixed train, special, and light-engine service that is unwarranted under present conditions. (I. W. EMMONS, auditor.)

Lehigh and Hudson River Railroad.—Less activity, increased idleness, neglect of duty, decreased efficiency. (MORRIS RUTHERFORD, vice-president and general manager.)

Lehigh and New England Railroad.—The effect of the presence of an additional man would be to have unnecessary number of men employed on trains. (R. H. WILBUR, vice-president.)

Lehigh Valley Railroad.—Increased operating expenses with practically no return, as crews now on trains are sufficient for efficiency of operation. (J. F. MAGUIRE, general manager.)

Lexington and Eastern Railroad.—Unnecessary expense. (W. A. McDOWELL, general manager.)

Long Island Railroad.—Unnecessary increase in expense, without any apparent increase in safety of operation. (RALPH PETERS, president and general manager.)

Louisville and Nashville Railroad.—The effect of the presence of an additional man on the train, as proposed, would be of no service and a useless and unnecessary expense. (G. E. EVANS, fourth vice-president.)

Louisville, Henderson and St. Louis Railway.—On passenger trains of 4 cars or less additional man would be of no service except in emergency cases. On trains of more than 4 cars an additional man would facilitate handling of passengers. On freight trains of more than 35 cars an additional man would facilitate movement and afford better protection. (W. R. HENSLEY, master of trains.)

Macon and Birmingham Railroad.—It would cause unnecessary expense. (O. M. GRADY, superintendent.)

Macon, Dublin and Savannah Railroad.—Effect unsatisfactory. Present train crew sufficient to handle the work, and the presence of an unnecessary man would be the source of dissatisfaction and disagreement among all. (J. P. WRIGHT, vice-president and general manager.)

Manistee and Grand Rapids Railroad.—Do not think it necessary to have more than five men when train is composed of 30 cars or less. (CHAS. H. MOREY, vice-president and traffic manager.)

Manistee and Northeastern Railroad.—They would be unnecessary. (P. R. L. CARL, general manager.)

Marietta, Columbus and Cleveland Railroad.—An unnecessary expense. (J. C. RIDDELL, general manager.)

Maryland and Pennsylvania Railroad.—Ordinarily no effect except to increase expense of operation. (J. S. NORRIS, general manager.)

Michigan Central.—Increased cost. Know of no purpose for which he might be used. Fourth man in engine or third man in way car an element of danger.

Minneapolis and Rainy River Railroad.—Only to increase our expense. (F. C. GERMARR, general manager.)

Minneapolis and St. Louis Railway.—On passenger—good; on freight—bad—absolutely not needed and in the way and a detriment to the service and safety, except on local trains, where needed account heavy merchandise work. (C. P. STEMBEL, superintendent.)

Minneapolis, St. Paul and Sault Ste. Marie Railroad.—It will be of no benefit whatever, either to the safety or operation of the train. (G. R. HUNTINGTON, general manager.)

Mississippi Central Railroad.—Expense and confusion. (R. K. SMITH, vice-president and general manager.)

Missouri, Kansas and Texas Railroad.—It would not add to the safety or efficiency of the train, and would not expedite the handling of the work. (A. A. ALLEN, president.)

Missouri, Oklahoma and Gulf.—No advantage of additional men.

Missouri Pacific Railroad.—We do not believe that the presence of an additional man on a train, as proposed, would increase the efficiency of the crew. (A. W. SULLIVAN, general manager.)

Mobile and Ohio Railroad.—The conditions of operation on this line do not require additional men either for safety or efficiency of operation. (R. V. TAYLOR, general manager.)

Montour Railroad.—Unnecessary. (F. H. STARK, superintendent.)

Munising Railway.—An increase of pay rolls 15 per cent and no increased efficiency. There will at times be a great inconvenience to railroad and to the traveling public and shippers by holding trains for the extra man not being on hand or from being sick. (H. R. HARRIS, general manager.)

Muscatine North and South Railroad.—Be absolutely useless. (CHAS. HOWARD, president.)

Nashville, Chattanooga and St. Louis Railroad.—On passenger trains he would be in the way. On freight trains he would either be in the way on the engine or else would be riding in the caboose. (J. W. THOMAS, JR., president and general manager.)

Nevada Northern Railroad.—It would not increase efficiency of train service, and any increase in numbers of men over standard crews we consider unnecessary and uncalled for. (L. G. CANNON, vice-president and general manager.)

New Orleans and Northeastern Railroad.—Additional man unnecessary for safe handling of train, liable to distract attention of enginemen and others, and would endanger life of all in case of accident by preventing free exit from locomotive or caboose. (D. D. CURRAN, president.)

New Orleans Great Northern Railroad.—No material advantage. (W. G. PEARSALL, general manager.)

New Orleans Terminal Railroad.—Useless in our work. (R. B. FOWLER, general manager.)

New York and Ottawa Railway.—Passenger-train service: Consists of 2 two-car trains each way a day. It frequently occurs that we are called on to move an extra passenger car, a car of live stock or a car of perishable freight on these trains. This would make a three-car train that would call for 1 conductor, 1 baggageman, 1 flagman, and 1 trainman. For such time as train is moving as a two-car train or if the car picked up is live stock or perishable, there would be an assignment of the crew: One baggageman on baggage car; 1 conductor, 1 flagman, 1 trainman in the coach, a number in excess of what "efficiency of the service" or "safeguarding the train service" would call for, as all of the necessary duties incident to the train service can be performed by 1 conductor and 1 trainman; there would be no duties for the third man to perform. If before a two-car train with 1 conductor and 1 trainman has started there has not been sufficient notice given that there is a third car to be taken on, or there is not a third trainman available to assign to the train, or if after the train has started it develops that there is a third car on the line that it is desired to pick up, then, in either event, the third car can not be taken on the train, so that we would be in the position of having to provide three men for all two-car trains or not moving the third car as and when desired.

Flanger snowplow trains: Train usually consists of plow, flanger, and caboose, with 1 conductor, 1 trainman. As there are no duties that the two men can not discharge, can see no necessity for adding the third man, who would have no duties to perform.

Freight-train service: At the present time the train consists of 1 conductor and 2 brakemen. In starting from terminal the cars in train are usually less than 20, say 10 loads and 10 empties. Cars are picked up on the line until at times they have

30 cars in train, 15 loads and 15 empties. When the train starts the number of cars to be picked up is not known, so that the additional flagman must be provided on all trains, or the picking up of cars on the line will have to be limited to the total of 25 cars, as provided for. I fail to see where the duties incident to train movement can not be properly performed by 1 conductor and 2 brakemen. Such being the case, do not see that the assignment of an additional man, for train over 25 cars, will add to the efficiency of the crew or afford any additional protection to the train service. For us to move the business as offered to us from time to time and comply with this proposed law would mean increased expense for additional trainmen of upward of \$250 per month without any improvement in the service rendered or additional safeguard to the train service. (H. W. GAYS, general manager.)

New York Central and Hudson River Railroad.—Safety would not be promoted thereby. Accidents are not due to insufficient number of men on train, but to failure of the men to comply with the rules. (A. H. SMITH, vice-president and general manager.)

New York Central Lines.—The third brakeman on freight trains does not add in any manner to the safety of the trains; the conductor and two brakemen are able to do the work as quickly and safely as four men are now doing.

The duties assigned to the extra brakeman are entirely a matter of form. The extra man is supposed to ride in the center of the train and to look out for hot boxes or anything that is wrong with the train, but, as a matter of fact, it is seldom that he can notice anything wrong as quickly as a man on the rear of the train. We have not had an instance where the third brakeman has furnished any additional protection. In cold or stormy weather the man rides in the engine or in the caboose. A great many of our trains are made up entirely by yardmen in terminals, and there is no work for the third brakeman. The head brakeman watches for signals and assists in taking water. The rear brakeman watches the train, and while the train is standing protects it. The conductor takes care of his billing, reports, etc.

The Michigan Central operates its symbol trains from Buffalo to 4 miles from Michigan City with conductor and two brakemen, and at the Indiana state line picks up a third brakeman, carrying the extra brakeman for 40 miles, and completes the trip with only two brakemen. In other words, they have two brakemen for about 500 miles, and three for 40 miles.

The passage of the law did not increase the number of men in crews of all our passenger trains. Where we had use for the men, in local passenger or other trains with heavy travel, we had full crews before the law went into effect. The extra man put on under the law has no duties to perform which it is not perfectly practicable for the one brakeman to perform.

The Lake Shore did not furnish a flagman with light engines before the law referred to was effective. We know of no good reason for the flagman to accompany light engines where there is an automatic or manual block system of signals. The Big Four and Chicago, Indiana and Southern furnished flagman before the law was effective to turn switches, flag trains, etc. (C. E. SCHAFF, vice-president.)

New York, Chicago and St. Louis Railroad.—It would not increase the efficiency. (A. W. JOHNSTON, general manager.)

New York, New Haven and Hartford Railroad.—Increase in pay roll and no benefit whatever. (S. HIGGINS, general manager.)

New York, Philadelphia and Norfolk Railroad.—Dead expense. (ELISHA LEE, superintendent.)

Norfolk and Southern Railroad.—Unnecessary expense. (E. T. LAMB, general manager.)

Norfolk and Western Railroad.—Increased expense without corresponding increase in safety or efficiency. (N. D. MAHER, second vice-president and general manager.)

Northern Pacific Railway.—Of no benefit to the railway companies or to the public; would divide the present duties easily assumed by the present force, making the work of all train employees other than enginemen somewhat easier. (HOWARD ELLIOTT, president.)

Northwestern Pacific Railroad Company.—In the last session of the California legislature a bill was introduced of practically the same nature.

This bill passed both houses, but was vetoed by the governor for the following reasons:

The text of section 1 rendered the provisions of the bill applicable to any and all portions of a railroad which might on all of its tracks operate at least four trains per day each way. There are many minor branches of the large railway systems in California on which for the convenience of the public rather than for the company, frequent two-car trains are run, and lately a large number of gasoline motor cars have been put in service, the crew of which consist of a motor-man and conductor only. The bill as

passed by the legislature would include such trains and would call for a crew of five men therefor.

The California bill further included a condition that a baggageman must be employed on all passenger trains. The contention that the employment of such man is necessary for the safety of employees and travelers was based upon the idea that in the absence of such employee one of the brakemen must do the work, thus taking him from his regular employment. On nearly all trains in California express messengers or their helpers handle baggage, rendering the employment of a specific baggageman unnecessary. Further objection was made by the railroad companies on the ground that long trains are usually "through" trains, on which the work done by brakemen is inconsiderable, and that the extra brakeman is absolutely useless on such trains. On way freights or in busy industrial territory, railroad companies, for their own protection, increase the number of brakemen in crews, so that in one instance within my knowledge five brakemen are in the crew, two being used as flagmen, three handling freight and doing switching. On long passenger trains, outside of announcing stations and work as flagmen, there is little use for brakemen. Two men are therefore able to cover any ordinary train. All well-managed roads handling exceptionally long trains of passengers, such as excursion, picnic, etc., temporarily increase their crews to properly handle the people.

It would, therefore, seem that the proposed bill would work an unnecessary hardship on the carriers without promoting in any legitimate way the safety of the public or of the employees, and would practically create sinecures for a large number of men, making the cost of operation so expensive as to lead to curtailment of the service and thereby injuriously affect the interests of the public. (W. S. PALMER, general manager.)

Oregon Electric.—Increased cost of operation without any additional safety or more satisfactory service.

The Oregon Railroad and Navigation Company.—Do not think that presence of additional man on passenger trains would improve service to any extent. Only use that could be made of him would be in assisting in handling baggage and express at stations. Now have as much help at stations assisting in this work as can be worked to advantage.

Additional man on through freight trains would not be of any particular benefit, but may be of some assistance on local freights on account of large amount of switching and loading and unloading freight; but even on such local freight trains do not think that results obtained would justify the additional expense. (J. P. O'BRIEN, vice-president and general manager.)

Oregon Short Line.—More men not necessary. With modern appliances required by law more men than one conductor and two brakemen simply drawing salary for services not rendered. Nothing to do. (W. H. BANCROFT, vice-president and general manager.)

Pacific and Idaho Northern.—In so far as this law would apply to this line it means simply that the additional man employed would be of no useful service or function whatsoever, or if the additional man performed any service or did any work it would merely lighten the labors of men already employed, who in the aggregate have too little active work to do.

Parry and Durango.—As far as this company is concerned, no additional man is needed. (JAS. I. LONG, general manager.)

The Pennsylvania Railroad Company.—The presence of additional men on trains as proposed is considered burdensome and unnecessary without in any way contributing to safety of operation. Independent of the enormous increase in expenses, it is quite probable that these additional men would result in decreased efficiency. (W. H. MYERS, general manager.)

Pennsylvania lines west of Pittsburgh.—Our equipment is so fitted with air-brake appliances that the duties required of, and performed by, freight brakemen are nominal and not sufficient to keep them busy. We do not feel that the additional men would add either to the safety or efficiency of the service, but, on the other hand, believe that the presence of additional men with nothing to do would prove demoralizing, foster idleness and carelessness, and result in decreased efficiency and safety. (G. L. PECK, general manager.)

Peoria and Pekin Union.—Unnecessary. (R. H. JOHNSON, general manager.)

Pere Marquette Railroad Company.—In freight-train service the addition of another man would not be required, and it would result in a further division of responsibility which would tend to increase the risk. Trainmen oppose riding on top. The additional man could only be valuable by being in this position. (WM. COTTER, president and general manager.)

Philadelphia and Reading.—Do not consider that an additional man is necessary for safety or efficiency. (THEO. VOORHEES, vice-president.)

Phoenix and Eastern.—Simply increase expense and not add to safety of trains. (C. M. SCOTT, superintendent.)

Pittsburgh and Lake Erie.—Not necessary and a needless expense. (J. B. YOHE, general manager.)

Pittsburgh, Lisbon and Western.—Would have no use for him on this road, so far as operation of trains is concerned.

Pittsburg, Shawmut and Northern.—Increased expense without corresponding increase in safety or efficiency. (B. C. MULHERN, superintendent.)

Pontiac, Oxford and Northern.—No additional men needed on any of our trains; would be more men than needed and tend to make them all listless. (F. H. CARROLL, general superintendent.)

Quincy, Omaha and Kansas City.—Increase cost, without any benefit whatever. (W. G. BRIMSON, vice-president and general manager.)

Richmond, Fredericksburg and Potomac Railroad—Washington Southern Railway.—Think present number of men adequate and an additional man would be unnecessary and a useless expense. If this law should be passed, to conform to same it would require, in moving empty engines over the road, three men in addition to the engineer and fireman, and with freight trains of over 25 cars one additional man. (C. W. CULP, general superintendent.)

Rutland.—Only added expense to railroad company without any returns. (S. S. COLTON, superintendent.)

St. Louis and San Francisco.—Additional man would be of no benefit to the service. (C. R. GRAY, vice-president.)

St. Louis, Brownsville and Mexico.—Result in an increase in operating expenses without adding to operating efficiency. (A. T. PERKINS, first vice-president.)

St. Louis, Rocky Mountain and Pacific.—Would not be an advantage. (J. VAN HOUTEN, general manager.)

St. Louis Southwestern.—Think it unnecessary; would increase expense without a corresponding increase in efficiency. (F. H. BRITTON, vice-president and general manager.)

San Antonio and Aransas Pass.—In my opinion the effect of the presence of an additional man on a train, as proposed, would neither better the public service nor increase the safety of operation, but would simply mean there would be one more man to carry in the coaches or the caboose or on the engine, and instead of being any real assistance would actually be more likely to be in the way.

San Pedro, Los Angeles and Salt Lake.—From our experience it would be absolutely unnecessary. (R. E. WELLS, general manager.)

Santa Fe, Prescott and Phoenix.—On our line his work would be uncalled for and useless. (W. A. DRAKE, vice-president and general manager.)

Seaboard Air Line.—Under operating conditions on this system we consider additional man absolutely unnecessary. (L. G. HAAS, agent for receivers.)

Sierra of California.—Extra expense without any compensatory advantage.

Skaneateles.—No benefit for the service, merely a bill of expense. (M. F. DILLON, president.)

Southern Indiana.—Do not think the presence of an additional man on a train, as proposed, would increase the efficiency or safety of operation. (M. W. WELLS, general manager for receiver.)

Southern Pacific Company.—The only effect on these lines would be an increase in operating expenses. (E. E. CALVIN, vice-president and general manager; J. P. O'BRIEN, general manager.)

Southern Pacific of Mexico.—None needed. It would not result in any increased safety or efficiency.

Southern Railway.—The only effect of the presence of an additional man on a train, as proposed, would be an increase of train expense without any benefit whatever. (C. H. ACKERT, vice-president and general manager.)

Southern Railway (St. Louis-Louisville Lines).—Additional man on passenger trains is of no use whatever and would be an increase of train expense. (C. H. ACKERT, vice-president and general manager.)

Spokane International.—Increase in cost of operation without any increase as to safety or proportionate increase in regard to efficiency.

Spokane, Portland and Seattle.—Not sufficient to warrant expense. (J. P. ROGERS, superintendent.)

Staten Island Rapid Transit.—Entirely useless and unnecessary. (G. H. CAMPBELL, vice-president.)

Sunset Central Lines.—Entirely unnecessary and would add to expenses of operation without any reason. (T. FAY, vice-president and general manager.)

Susquehanna and New York.—It would make an extra expense to the railroads without any additional efficiency or safety. (P. M. NEWMAN, president and general manager.)

Temiscouata.—Under local conditions an extra man would be unnecessary.

Tennessee Central. Not necessary. (A. B. NEWELL, president.)

Terminal Railroad Association of St. Louis.—As we do only switching service, we maintain extra yard men where necessary. (W. S. MCCHESNEY, jr., president and general manager.)

Texas and Pacific.—An unnecessary expense. (L. S. THORNE, vice-president and general manager.)

Tidewater and Western.—An unnecessary expense. (T. M. R. TALCOTT, general manager.)

Toledo and Ohio Central.—Do not think that an additional man, as proposed, would be of any benefit whatever. (H. E. SPEAKS, general superintendent.)

Toledo and Western.—Do not think it necessary. (C. F. FRANKLIN, president and general manager.)

Toledo, Peoria and Western.—No more men are required on our trains than are used. An additional man in occasional cases would help out slightly in various ways, such as doing switching at stations, but generally speaking an additional man is not needed, and the wages paid would simply be lost to the company. (S. M. RUSSELL, superintendent.)

Toledo, St. Louis and Western.—Additional expense with no material results. (P. H. HOULAHAN, general manager.)

Toledo Terminal.—Only more inattention to duty so far as safe operation is concerned, as it would provoke inattention account of visiting instead of attending to business. (T. B. FOGG, general manager.)

Tonopah and Tidewater.—Additional cost to the company, with no greater efficiency.

Trinity and Brazos Valley.—Do not see necessity for third man on account of assistance now rendered by air brakes. (H. S. BOTTOMS, superintendent car service.)

Union Pacific Railroad Company.—The effect would be a curtailment of service in every way possible to meet the additional expense. The additional man is obviously unnecessary in obtaining a greater safety in operation of trains. The large expenditures already made and yet to be made in equipping the lines with automatic block signals should be an argument against adding an additional man to the train crew. (A. L. MOHLER, vice-president and general manager.)

Vandalia.—Additional expense without any additional factor of safety or more efficient service to the public. (B. McKEEN, general manager.)

Virginia and Southwestern.—An additional expense without any beneficial results. (S. J. MULVANEY, superintendent.)

Virginia and Truckee Railway.—The railroad company should and does know proper number of trainmen required to safely protect its interests. I desire to add to the information already given that, January last, during the session of our legislature, a delegation of train and enginemen attempted to pass a bill requiring five men on all trains over 3 cars. I appeared before the assembly and senate committees and protested against such a measure. I proved to them that we had been running a passenger train, consisting of 1 mail, 1 express, and 2 coaches, between Reno and Virginia City, 104 miles, round trip daily, for thirty-five years, with 2 enginemen, conductor, and 1 brakeman, and during all that time we never had a collision. Not even an accident, due to any neglect of trainmen, or to the absence of a second brakeman. That the putting on of a second brakeman on such a train, with nothing to do, would develop an agitator, and simply endanger our present good service, and at the same time put our company to an extra cost of at least \$1,200 a year. That section of the bill was withdrawn. Owing to our heavy grades we seldom have to exceed 20 cars in our freight trains. The conductor and 2 brakemen, properly placed, should safely protect any train of 30 cars. (A. M. ARDERY, superintendent.)

Virginian.—An additional expense. An incentive to laziness. (RAYMOND DU PUY, vice-president and general manager.)

Wabash Railroad Company.—No particular effect, except to increase expenses. In case of passenger trains having 3 or 4 coaches or more, used locally, an additional man to assist passengers may reduce delays at stations. (HENRY MILLER, vice-president and general manager.)

Wabash, Chester and Western. Additional cost and no better results. (C. B. COLE, president and general manager.)

Washington, Potomac and Chesapeake.—In our case we do not need another man. (W. W. EARLY, general manager.)

Western Allegheny.—We have no use for additional men on our crews. No good would result. (H. F. BICKEL, superintendent.)

Western Maryland Railroad.—Do not think any great advantage would be derived by placing an additional man on a train as proposed, for the reason that they are sufficiently manned at the present time to insure safe operation. (A. ROBERTSON, vice-president and general manager.)

Western of Alabama.—With our present automatic couplers and air brakes on all cars, the proposed increase in train crews would be a useless and unnecessary increase of expenses. (C. A. WICKERSHAM, president and general manager.)

Wheeling and Lake Erie Railroad.—The principal objection to the proposed regulation is that it would add a more or less irresponsible employee to each crew, without any adequate return in the way of safety or increased efficiency. All modern railroads have practically reached the limit of freight trainload, and with the increase in the average capacity of freight cars, the number of cars per train will be decreased rather than increased. As is frequently the case in legislation of this character, the greatest hardship would fall upon roads like the Wheeling and Lake Erie, least able to bear the additional burden. Our maximum earnings from passenger traffic are 2 cents per mile, our average earnings per mile being 1.63 cents in 1909. Practically no revenue is enjoyed from dining cars, sleeping cars, extra-fare trains, or special service. Our freight revenues are derived from low-grade commodities to a great extent, such as coal, ore, limestone, brick, and other clay products, average earnings per ton mile in 1909 being a little over 5 mills. It is therefore apparent that our earnings per passenger train mile and per freight train mile would be reduced disproportionately in comparison with a prosperous trunk line handling a high-class passenger business, heavy mail contracts, and a greater percentage of merchandise, refrigerated products, manufactured articles, etc., yielding a greater earning per ton mile.

We are at present confronted with a proposed reduction in rates of freight on coal, our principal commodity, which we are opposing before the Ohio railroad commission. If the proposed reduction had been effective during the fiscal year of 1909, our deficit would have been approximately \$384,000, and if we add to this the increased expense incident to compliance with the proposed law, our total deficit would have been nearly \$500,000, from which it will appear that if the attacks upon us from these different directions are successful, the Wheeling and Lake Erie will soon be driven out of existence. (B. A. WORTHINGTON, receiver.)

Wheeling Terminal Railway Company.—In my opinion any increase is not only useless in the direction of safety or efficiency, but would decrease both safety and efficiency. Too many men always spoil discipline, efficiency, and safety. (A. L. MORGAN, superintendent.)

Williamsport and North Branch Railroad.—Shifting of responsibility. Lessening the vigilance of the individual in proportion to the number sharing the responsibility. (H. A. KNIPE, acting superintendent.)

Wrightsville and Tennille.—Expense without any benefit whatever.

Wyoming and Missouri River.—Of no benefit. (D. W. HICKEY, general manager.)
Youngstown and Ohio River.—No advantage. (J. D. DEWEES, superintendent.)

On behalf of the special committee on relations of railway operation to legislation.

F. O. MELCHER, Chairman.

Mr. LITTLEPAGE. We will now call Mr. Campbell, of the Southern Pacific.

The CHAIRMAN. How many more gentlemen do you wish to hear to-day, Senator?

Mr. FAULKNER. We have a number here yet, Mr. Chairman, in reference to this bill. I suppose there are ten or twelve here. course we are going to stop when the committee get tired of it. We want to represent each different section of the country on this bill.

Mr. NEALE. I have four or five from the Pennsylvania railroad, but they will not be able to get here until to-morrow.

The CHAIRMAN. We will go ahead at 2 o'clock this afternoon.

Mr. FAULKNER. Will you permit me to make this suggestion? We have a number of witnesses here on other bills than this bill and the

boiler bill. We think the boiler bill and this bill will certainly take to-day and to-morrow, and if we could let the baggage men and other men on claims, etc., go until next Tuesday, instead of waiting here until that time, we would be obliged to you.

The CHAIRMAN. We can not hear you next Tuesday. We gave you Thursday, Friday, and Saturday of this week to put on any witnesses you might select. Next week we will devote to the hearing of gentlemen in favor of general propositions in reference to amendments to the interstate-commerce law, and we set aside a week from next Monday for a hearing on the bankers' bill of lading. I do not know how long those hearings may take, but after those hearings are concluded we will give you an opportunity to go ahead.

Mr. FAULKNER. Of course that is all we could ask of the committee. You do not want any of our witnesses here, then, next week?

The CHAIRMAN. No.

(The committee, at 12 o'clock noon, took a recess until 2 o'clock p. m.)

AFTER RECESS.

FULL-CREW BILLS.

The committee proceeded with the consideration of the bill (H. R. 10888) "To promote the safety of employees and travelers upon railroads by compelling common carriers by railroad to properly man their trains."

STATEMENT OF MR. B. A. CAMPBELL, OF OGDEN, UTAH.

Mr. CAMPBELL. I might qualify by saying that I am assistant superintendent for the Southern Pacific Railroad of the lines east of Carlin, Nev., in Utah. My headquarters are at Ogden, Utah. I have charge of the two freight districts, and also the Ogden terminal. I might further qualify with the chairman and the committee by stating that this is my twenty-seventh year in the train service work. I commenced as a freight brakeman and went on up to conductor, both passenger and freight, on both prairie and mountain roads. For the past nine years I have been train master and third assistant superintendent.

I believe we have before us a bill introduced by Mr. Martin, namely, the "full-crew" bill, asking for an additional man, or, rather, requiring passenger trains of three cars or more to have at least two brakemen, engineer, fireman, and conductor; over that practically three, including a baggage man; and requiring freight trains of 25 cars or more to have an additional freight brakeman.

I do not know what I can say to you, further than this: I have had experience as a freight brakeman in hand-brake days, with link-and-pin coupling, both on the level and on the mountains; and for the life of me I do not know what I would do with the third brakeman on the average train run in this country, between here and San Francisco, except in very rare cases. The company I am with at times puts more than that on a package train—not to promote safety, however, but to expedite the train and do what might be termed the stevedore work.

I do not know that I am prepared to make a very long speech on that subject, because I do not feel competent from a trainman's standpoint to enlighten you. I shall be glad to have the chairman, or any members of the committee ask questions, however.

Mr. TOWNSEND. Are complaints made by the men along your line that the present crews are not sufficient?

Mr. CAMPBELL. No, sir. We have none at all on my division.

Mr. TOWNSEND. Do the men make complaints individually, or do they make them generally, through committees?

Mr. CAMPBELL. We would hear them in both ways if there were any complaints to be offered. Some of our men probably would talk to us individually; usually, however, through committees.

Mr. TOWNSEND. To whom would the committees go?

Mr. CAMPBELL. They would go first, probably, to the assistant superintendent or trainmaster—whoever had charge of them—as a matter of courtesy, if for no other reason; and then they would follow it up.

Mr. TOWNSEND. Do you know whether, as a fact, complaints have been made to the various officials you have mentioned?

Mr. CAMPBELL. Not on our lines; no, sir.

Mr. TOWNSEND. You know that, do you?

Mr. CAMPBELL. I know that positively. I do not know what I would use the third man for. He would have to ride either on the engine or in the caboose. In the caboose we now have a brakeman and a conductor on the lookout. The brakeman (or the flagman, as you may prefer to term him) is there to flag in case you stop, which is rare, between stations. You understand that we are equipped also with electric block signals. I presume you gentlemen all understand the working of those signals.

Mr. ADAMSON. On the long freight trains there is no place to ride except on the ends of the train, is there; in the engine and in the caboose?

Mr. CAMPBELL. Those are the only places; yes, sir.

Mr. ADAMSON. When you voluntarily put on an extra man, it is in the interest of the road, to facilitate the loading and unloading of local trains?

Mr. CAMPBELL. Yes, sir. Then it would be on a package train, of course, and no other.

Mr. ESCH. How do you operate your trains down the long mountain grades?

Mr. CAMPBELL. On the Southern Pacific Railroad we use what are commonly known as retainers, where the hills are short. Of course, where they are steep, the men ride on top, in case of an emergency.

Mr. ESCH. How long are some of those grades where you have to apply air brakes?

Mr. CAMPBELL. On my end there are really no mountain grades; they are less than 2 per cent, and very short. A man usually does not have to ride out over 5 to 9 miles. That would be the heavy part of the entire road, probably.

Mr. ESCH. Do they use the hand brakes in operating your trains down grade?

Mr. CAMPBELL. No hand brakes; no, sir.

Mr. ESCH. You use the system of retainers, do you?

Mr. CAMPBELL. Yes, sir.

Mr. ESCH. And you find that that works successfully on your road?

Mr. CAMPBELL. Oh, yes. On a grade up to 2 per cent, if you have any curvature, you will find places on the hill where if you turned up all of your retainers you would have to work steam to keep them going.

Mr. ESCH. There is no danger of a loss of air in going down a long grade by alternating the cars, is there?

Mr. CAMPBELL. There should not be; no, sir. The retainers only retain what you have already reduced.

Mr. ESCH. So, in your judgement, so far as operating on mountain grades is concerned, you would not need additional help?

Mr. CAMPBELL. It would depend, of course. There are plenty of places on 2 and 3 per cent grades, where I have run the train and braked, where we did not find any use for a third man at all. They have been put on on different railroads, on short trains.

Mr. TOWNSEND. Do any of your trains run with fewer than five men?

Mr. CAMPBELL. No main-line trains; no, sir.

The CHAIRMAN. Is that all?

Mr. ROWE. Mr. Chairman, may I be permitted to ask a question?

The CHAIRMAN. Yes; provided you do not start in to cross-examine the witness.

Mr. ROWE. I should just like to ask the gentleman what is the usual number of men that constitute a crew on the trains in his territory?

Mr. CAMPBELL. An engineer, a fireman, a head brakeman, a rear brakeman or flagman (as you prefer to term him), and a conductor.

Mr. ROWE. And there is no exception to that rule?

Mr. CAMPBELL. Not on my part of the road; no, sir.

Mr. ROWE. There is no reduction below that minimum?

Mr. CAMPBELL. No, sir; not on the main line.

Mr. ROWE. That is all I want to ask.

The CHAIRMAN. Very well.

STATEMENT OF MR. J. M. DAVIS, OF SALT LAKE CITY, UTAH.

Mr. DAVIS. I am general superintendent of the Oregon Short Line and also general superintendent of the Southern Pacific lines in Nevada.

Mr. Chairman, on some of our less important branch lines in Utah we are now putting in a gasoline motor car, on which we supply a motorman, a combination baggageman and brakeman, and a conductor -three men. If the proposed bill were enacted, we would have to put an additional man on a single motor car, which we think would be entirely unnecessary. In western Nevada we are now burning oil on our locomotives; and we have recently had a request from the trainmen's organization that we put an additional seat on the fireman's side of the locomotives in order that they may have a place to sit down. In burning oil the fireman has very little to do, and he occupies a seat that has heretofore been occupied by the brakeman. If we should have another brakeman, there would not be any place for him on the locomotive. The fireman and brakeman occupy the left-hand side of the cab. We would very much dislike

to have a man sitting alongside of the locomotive engineer on the right side; so he would have to ride, perhaps, in the caboose. We have some heavy grades in Montana and Idaho. We require all of our freight trains to come to a stop at the head of the grades and make a test of the air brakes, and we have not found it necessary to use hand brakes on grades of 120 feet to the mile.

I do not know that there is anything else I can say, unless you wish to ask some questions.

The CHAIRMAN. Do you use more than the usual crew on any of these grades?

Mr. DAVIS. No, sir.

The CHAIRMAN. How long a train do you run?

Mr. DAVIS. Our average train consists of 35 cars. Our maximum trains consist of 75 cars.

The CHAIRMAN. On one of those 75-car trains, either going up or down grade, you do not put on extra men at all?

Mr. DAVIS. No, sir.

Mr. ESCH. Going up you have to use a "double header," do you not?

Mr. DAVIS. We do not pull 75 cars up. Those 75-car trains are on the low-grade districts.

The CHAIRMAN. What is your maximum train on the heavy grades?

Mr. DAVIS. About 40 cars, depending on the lading of the cars.

The CHAIRMAN. That is, loaded cars?

Mr. DAVIS. Yes, sir.

The CHAIRMAN. What is your maximum train of empties on heavy grades?

Mr. DAVIS. Fifty-five cars.

The CHAIRMAN. Whatever it is, you do not use any extra men?

Mr. DAVIS. No, sir.

The CHAIRMAN. You rely, as far as that is concerned, altogether upon the air brakes?

Mr. DAVIS. Yes, sir. In my territory, on the lines I represent, there are 16 different places where we have adverse grades and help trains, and we have not any extra men at any of those places. That includes some narrow-gauge lines in southern California.

Mr. TOWNSEND. Have you had any complaints on account of deficiency in the crews?

Mr. DAVIS. No, sir. On the contrary, I have been meeting and discussing with committees representing trainmen and enginemen almost continually for twelve years, and I have never had a committee ask for additional men on account of safety. I have had requests for additional men to handle package freight, to act as stevedores; but I have never had any requests for additional men on account of safety.

Mr. TOWNSEND. Have you ever had any accidents the cause of which was alleged to be the lack of men to take charge of the train?

Mr. DAVIS. No, sir.

Mr. TOWNSEND. Would your men complain to you individually if they had any complaint to offer?

Mr. DAVIS. Yes, sir; I think they would. I started in as a freight brakeman more than twenty years ago; and a great many of the trainmen feel at liberty to come to me and discuss our affairs.

Mr. TOWNSEND. So you understand the situation well enough to say that you are confident there is no cause of complaint among your men?

Mr. DAVIS. No, sir. I think that commencing with the depression of October and November, 1907, there were a great many trainmen thrown out of employment; and this question was agitated more or less at that time, perhaps to secure positions for the idle members of the two organizations. Of course I can not state that as a fact.

Mr. TOWNSEND. Did those complaints reach you?

Mr. DAVIS. No, sir; they did not reach me.

Mr. TOWNSEND. Whom did they reach?

Mr. DAVIS. I have heard that matter discussed individually. I stated that I could not say that that was a fact, but it was a fact that there were great numbers of men out of employment at that time. To-day the situation is reversed. We have had traffic delayed in the last six weeks on account of a shortage of men—enginemen, especially.

Mr. ESCH. Have you had any accidents in the last year on account of trains getting beyond control going down grade?

Mr. DAVIS. No, sir.

Mr. ESCH. Have you had any difficulty as to the parting of trains?

Mr. DAVIS. No, sir.

Mr. ESCH. What is this gasoline motor car which you speak of used for?

Mr. DAVIS. The transportation of mail, express, baggage, and passengers. It is a combination car, about 70 feet in length, with a 100-horsepower gasoline motor, and seats 70 passengers in one compartment. We use those cars where the traffic is so light that a steam train is run at a loss.

Mr. ESCH. So there is really only the one coach, the one car?

Mr. DAVIS. It is just the one car; yes, sir. They are confined mostly to branch lines. We now have 3 men on each of those cars, and I do not know what we would do with a fourth man.

Mr. ESCH. Under your interpretation of this bill, you would have to put on the minimum number of men even though there were but 1 car?

Mr. DAVIS. Yes, sir. I might say that, according to estimates we have prepared, the bill would cost the lines I represent \$314,058 per year. Those figures were based on the number of crews we had in 1907.

The CHAIRMAN. How much did you say?

Mr. DAVIS. Three hundred and fourteen thousand and fifty-eight dollars.

Mr. ADAMSON. Those single gasoline motor cars could be safely operated with only 2 men each, could they not?

Mr. DAVIS. Yes, sir; if we took off the baggage and mail and express service. At the present time we have 1 motor car that has 4 men, but 1 of them is a mail clerk employed by the Government.

Mr. ADAMSON. It is used for several purposes, and has to have more men?

Mr. DAVIS. Yes, sir. He takes care of the mail, express, baggage, and so on. We may possibly put a trailer on one of them. If we do, we may put on an extra man for handling milk, cream, and stuff like that.

Mr. SIMS. By amendment, I suppose, those motor cars could be eliminated from the operation of this act?

Mr. DAVIS. I do not know to just what extent one-car trains are run on roads in the East; but there are now something like 20 gasoline motor cars in suburban service out of Sacramento.

Mr. ADAMSON. I know of one passenger and baggage car that is run 17 miles with only one man, but it carries nothing but mail.

Mr. DAVIS. We put three men on ours.

The CHAIRMAN. Is that all?

Mr. DAVIS.. That is all.

STATEMENT OF MR. J. J. BERNETT, OF CLEVELAND, OHIO.

Mr. BERNETT. I am general superintendent of the Lake Shore and Michigan Southern Railway, with headquarters at Cleveland.

I want to say just a word in reiteration of what Mr. Smith said about this question of discipline. I think that is the most important feature of this question, notwithstanding that it is going to cost the railroads of the country \$20,000,000, or practically \$100 a mile for every mile of railroad in the country. I feel that the question of discipline is the paramount and more important question to be considered. I feel so strongly on that point because of the experience we have gone through in the last nine years during which I have held an official position. Up to two years ago the tendency among our men was to get farther and farther away from the official, and it was getting to a dangerous point. We have talked with our men and pointed out to them the dangers, not only to the operation of the trains, but to themselves. I believe they are beginning to see the wisdom of our advice. I encouraged our men, as far as I could, to read the writings that were published about eighteen months ago by James O. Fagan, entitled "Confessions of a railroad signalman." I hesitated somewhat about it, because he hit the weak-kneed and vacillating official harder than he did the men. But he did tell the men some plain truths, and it was up to the officials to take care of the men if we could get those plain truths before the men. For that reason I advised our men to read his writings, and they are very interesting.

Mr. ESCH. They were published as part of the hearings of this committee in 1908.

Mr. BERNETT. I am glad of that.

As to the expense to our company, which has 1,760 miles—that is, including two short lines which we operate outside of the Lake Shore—it would cost us \$277,920. We feel that the additional man is unnecessary because of the many safety appliances that we have provided. Our freight trains are air braked from the engine to the caboose. We have put into the cabooses air gauges, so that the conductor and the flagman know how much air the engineer is carrying. We have put into the cabooses a valve by which the conductor or the rear brakeman can apply the brakes, and it is so constructed that it is impossible to apply the brakes in the emergency, because that would be unsafe. But they can make a service application. We have equipped the main line of our railroad with automatic signals at an expense of \$1,765,092. We have equipped or are equipping our main line with interlocking switch protection, and so far have spent \$2,000,000 on

that. At the present time we have authorized \$150,000 of work that is going on. It costs us annually \$127,938 to maintain the automatic signals. In other words, we are maintaining the automatic signals on our railroad for \$100,000 less than this third brakeman would cost us. It is costing us \$314,173 a year to maintain our interlockers.

I have a lot of other figures here; but I do not take much stock in statistics, so I will not talk any more figures.

Now, as to the Indiana "full-crew" bill: We operate through Indiana. When our freight trains cross the Indiana line, going into the State, we stop them and take on a third man. Coming out of the State we stop the train and take the third man off. You can form your own conclusion as to what our trainmen think of the third man. He is commonly referred to as "the cook."

There has not been any story-telling here. I should like to tell you, though, of an experience we had before the Ohio legislative committee. One of our superintendents was called there in opposition to a "full-crew" bill that was being considered. He made the statement that he could not find any use for the fourth man in the crew (which is what the third brakeman means), except to fill out a hand at a game of cards. And there are a great many railroad men that feel the same way about it.

I have talked with all of our superintendents about this matter. There are eight of them. I have talked with the two assistant general superintendents, and with our general manager, all of whom have had a great many years of experience as railroad officers and in the ranks. None of them have ever heard of a case where an accident might have been prevented through having the additional man. Neither have they ever heard of a case where an accident was prevented where we have had the third man, as we do on some of our way-freight and switch runs. We did have an accident, however (I do not like to talk about our troubles, but we have them), at Hillsdale, Mich., on the 21st of last December. It was a local pick-up train. They pulled out through a cross-over onto the main track. There was no flag protection given that train on the main track. A passenger train ran into the side of it, tipped the locomotive over, and killed the engineer, or injured him so that he died within an hour. He was one of the best men we had. That train carried a conductor, three brakemen, and a student brakeman, and yet it got no flag protection. Why? Because, I believe, there was divided responsibility.

Some very good operating officials are to-day giving very serious consideration to the question whether, in automatically signalled territory, we should not do away with the flag entirely. We were recently unfortunate enough to have an accident, a rear-end collision between two passenger trains in automatically signaled territory, on a piece of railroad that, I think, has as good a signal system as there is in the world. And why? Because there was divided responsibility. The engineman, although he had his caution indication and his home indication, admitted to us at our investigation and to the coroner at the coroner's inquest that he depended upon a flag. The flagman admitted that he failed to flag properly, because he figured that the engineer would get the signal indication, and thought it was therefore not necessary for him to go out into the storm.

Mr. ESCH. But your rules required him to go back, did they not?

Mr. BERNETT. Certainly.

Mr. ESCH. And he violated the rules?

Mr. BERNETT. Yes, sir. He was a man that had been in the service twenty-one years, and had been flagman on a passenger train practically all of that time. He was active and in good health. He felt his responsibility to such a point that three days afterwards he was taken to a sanitarium, and probably will never leave it.

This means putting another man on each of our trains. During the year 1908 there were injured and killed on our railroads 489 road trainmen, conductors, and brakemen. Of that number, 122 (just 25 per cent) received their injuries either on or in the caboose. I do not believe that is generally understood. Twenty-five per cent of them received their injuries either on or in the caboose. That would be increased if we added to the number of men that would ride in the cabooses; and that is where they would ride. When the Indiana bill was put into effect we undertook to see whether any advantage could be gained from having the third man, and we issued an order that the third man, or one of the brakemen, must at all times ride in the middle of the train. We disciplined and discharged men, but we could not make them ride there—not even in the summer time, during the cold nights. Committees of the men went to our trainmasters and superintendents and protested against it, and we finally had to give it up. We could not make them ride in the middle of the train. We did not think we could when we started out to do it, but we were going to undertake to see if it were possible to do it. As Mr. Smith said, here, there are times when a man could not live out there. Necessarily he would ride in the caboose. There is no room for him on the engine. We would not want him there. There are too many men there now; but it is necessary that there should be that many.

While I do not know that this has any special bearing on the case, there seems to be a disposition to do a good deal of legislating to prevent railroads from causing injury and death to our population at large. The report of the Interstate Commerce Commission says that during 1908 there were 380 passengers killed and 1,114 injured. During the same time there were 6,000 trespassers killed and 800 injured. To my idea, there is a good field for legislation.

The CHAIRMAN. How many employes were killed and injured during the same time?

Mr. BERNETT. I have not that information, except for our own road, Mr. Mann.

The CHAIRMAN. Both of the other figures would pale into insignificance in comparison with that number.

Mr. BERNETT. I appreciate that; but the point I was undertaking to make (and it really has no direct bearing on this particular bill) was as to the effort we have been making in the various States, through the chambers of commerce and other civic bodies, to bring about legislation that would forbid trespassing, as we are unable to control it. I only speak of it here in a general way, as being a good field for effort.

Mr. ESCH. Of course you realize that those injuries are largely due to the fact that we have grade crossings for one thing.

Mr. BERNETT. A person that is killed or injured on a grade crossing would hardly be classed as a trespasser.

Mr. ESCH. No; I do not say he is a trespasser.

Mr. BERNETT. The figures that I speak of refer to trespassers.

The CHAIRMAN. They are classed with trespassers, I think.

Mr. ESCH. In some cases they are.

Mr. BERNETT. Not if they are rightfully on the highway, are they?

The CHAIRMAN. The Interstate Commerce Commission does not make that division, as I understand. They make a distinction only between persons who are there on the invitation of the railroad and those who are not.

Mr. BERNETT. I understood that they did. If they do not, I am getting into deep water. That is all I can say in explanation of that.

Mr. ESCH. Is it not a fact that at stations the railroads do not have the gate system in a great many towns, even those of considerable size?

Mr. BERNETT. Yes; that is true.

Mr. ESCH. Of course they have in European roads. Of course you know that they have a great many more precautions there.

Mr. BERNETT. We are trying to get to them as fast as we can. There is this to be said about it, though, if my information is correct: A person that gets on the railroad highway in European countries is in trouble. Here he is not.

Mr. ESCH. They can not cross the track unless they go over it or under it.

Mr. BERNETT. We are going to come to that.

The CHAIRMAN. Yes; when we do away with all of the grade crossings.

Mr. BERNETT. Yes, sir; and I think we are coming to that.

The CHAIRMAN. We are coming to it much faster than the railroad companies are willing to have us.

Mr. BERNETT. Let me cite you an instance. In the State of Indiana, for example, for every highway that we could separate there would be twenty-five opened. While I can not say that there are absolutely no restrictions, there are practically no restrictions on the opening of new highways across railroads. That is not true in some States. As for the Lake Shore, I can say that within the State of New York we have separated a great many grade crossings, and we are continually appropriating money for that purpose. The same is true in Ohio. That is because in those States when a crossing is separated, it means that another one can not be opened within a short distance of it at grade.

Mr. TOWNSEND. Do you run crews with less than four or five men?

Mr. BERNETT. Freight trains?

Mr. TOWNSEND. Yes.

Mr. BERNETT. No, sir.

Mr. TOWNSEND. Do you run any trains without that many?

Mr. BERNETT. We run some passenger trains on branches.

Mr. TOWNSEND. Is there any complaint about those short-crew trains?

Mr. BERNETT. We have been petitioned by committees of our trainmen to add to the number of men on trains.

Mr. TOWNSEND. What do they set out as their reasons for that?

Mr. BERNETT. To help them with their work.

Mr. TOWNSEND. That is, that they are overworked?

Mr. BERNETT. Well, they do not just put it that way.

Mr. TOWNSEND. They must give some other excuse than simply to help them with their work. Do they not do that? What were their reasons for demanding it?

Mr. BERNETT. The proposition as presented to me about three years ago was that they needed the men to help in doing the switching at local stations, and we had considerable discussion about that point. I pointed out to them, and I think I satisfied them, that after all there was very little occasion for it, because with our service in way freight and switching trains we have the third brakeman to assist in switching and expediting the work. Our through freight trains do not do any switching. They do very little sidetracking, excepting where they are put in with interlocked switches. They are operated from the towers. We have agreed with our men that if a through freight train stops at three stations on a trip to do work that should be done by a local train, way-freight work, they will be paid the local rate. And to give you an idea of how little of it there is, we do not pay the local rate to 3 per cent of our through freight crews. If they do local work at three stations, they get the local rate. So on our through freight service there is very little of that kind of work; and I think we satisfied the men, because they withdrew the request and did not press it.

The CHAIRMAN. You spoke a while ago of the question of discipline as being so very important. I am unusually stupid, no doubt, but I have not been able to get, either from what you said or from what the other witness said, the point of view which you have on that question. How does putting on an extra man affect the question of discipline?

Mr. BERNETT. You put me in rather an embarrassing position by making that statement about yourself, Mr. Chairman. You can not make anyone believe that you are stupid; and you have put me in the position of being unable to put the case clearly. But I will make an effort to do so.

The CHAIRMAN. You simply made a general reference to it. I do not think you went into it at all in detail.

Mr. BERNETT. I am willing to do that. I did not know whether you wanted to give me the necessary time or not.

I can remember the time when the trainmaster or general yard-master or superintendent of the division would go out into the yard and would meet a switchman or a brakeman that had any matter that he was not satisfied with and shake him by the hand, and the man would tell him then and there what the trouble was; and in nine cases out of ten it would be righted. For reasons that we all understand, they do not seem to be handled that way now. A man is not permitted to tell his trouble himself. It must be handled by some one delegated for that purpose. That separates the man from his employer; and when you separate a man from his immediate superior or employer, you are affecting the discipline. Some of those questions they are unable to handle with their committees; and this is one of them, apparently, that they are undertaking to handle by this legislative procedure, which separates them still more widely and takes them farther apart.

The CHAIRMAN. I do not see what that has to do with this question of whether you have an extra man on a train crew or not. How does that affect the discipline?

Mr. BERNETT. The principle does, as I see it.

The CHAIRMAN. I still do not grasp your point of view in making the statement.

Mr. BERNETT. They get away from the authority to whom they report, the authority that employs them, and the authority that pays them.

The CHAIRMAN. You now have five men in a train crew. Is there any trouble about discipline with the five men?

Mr. BERNETT. Why, yes; we think we have a good deal of trouble.

The CHAIRMAN. Not as far as legislation is concerned?

Mr. BERNETT. No.

The CHAIRMAN. If you add an additional man, that makes six men. How does that affect the question of discipline, so as to differentiate it from discipline over the five men?

Mr. BERNETT. It removes from the employing officer the authority to say how many men shall be on his train, or what they shall do, and it will get to a point where they will question his right to say what their specific duties are.

The CHAIRMAN. The fact that you have to have an engineer does not remove him from the employing officer in all those questions of discipline, does it? Yet you know that you can not run a train without an engineer.

Mr. BERNETT. I think it might affect it if Congress said there must be two engineers.

The CHAIRMAN. But suppose we say that there must be one engineer—how would that affect it?

Mr. BERNETT. We have one now.

The CHAIRMAN. Yes?

Mr. BERNETT. That would not change present conditions.

Mr. BARTLETT. And you could not get along without one?

The CHAIRMAN. Suppose we should say that you must have so many train men; we do not say what the train men shall do. You would still have absolute control of them?

Mr. BERNETT. Are we certain, Mr. Mann, that they would not come to you and ask you to say what they should do?

The CHAIRMAN. That is not the question. That is not before us.

Mr. BERNETT. But that is the question that it is leading up to, as I see it, and the way it is going to affect our discipline.

The CHAIRMAN. Is that the only fear you have if we should provide that you would have to have this extra man? Is your fear based upon the assumption that Congress then might determine what that man should do?

Mr. BERNETT. I do not think they would go to that length; no. But there are other questions that would follow.

The CHAIRMAN. Really, I do not understand yet why it affects the question of discipline.

Mr. BERNETT. I can not make myself any plainer. I would like to convince you if I could; I am sure of that.

The CHAIRMAN. Very well. Is that all?

Mr. BERNETT. That is all.

STATEMENT OF MR. H. J. REYNOLDS, OF NEW ROCHELLE, N. Y.

Mr. REYNOLDS. I am general yardmaster of the New Haven Railroad, Mr. Chairman. I have been employed twenty-eight years on the New Haven road as a train dispatcher, conductor, traveling conductor, and general yardmaster. I have had a good deal of experience on freight trains and passenger trains. I do not know that I have ever seen any train short of men, so far as safety is concerned. On all our through trains we have five men. Our local freights, which do the picking up and dropping of cars, have seven men. Most of our passenger trains on our division have six men for five or six cars. If we run excursion trains, we add on men. For eight cars we generally have six or seven men.

Mr. STAFFORD. What rule do you follow in apportioning the men to passenger trains?

Mr. REYNOLDS. On our division, the New York division, we very seldom run less than five or six cars. We generally have an engineer, fireman, conductor, baggage master, two brakemen, and a ticket collector.

Mr. STAFFORD. If you increase the length of the train beyond the usual number of coaches, what rule do you follow as to increasing the number of brakemen?

Mr. REYNOLDS. On an eight-car train we generally add about one man, providing it is a local train on the division. If it is a through train, we do not. We have no grades at all on our division; so it does not require any braking. I think that is all I can say, gentlemen.

Mr. BARTLETT. May I ask you a question?

Mr. REYNOLDS. Yes, sir.

Mr. BARTLETT. On all passenger trains as well as all freight trains, but especially passenger trains, you have all the necessary appliances in the way of air brakes and things of that sort?

Mr. REYNOLDS. Yes, sir.

Mr. BARTLETT. What necessity would there be for an additional man on a passenger train?

Mr. REYNOLDS. It depends on the passengers. If we run heavy trains, where we are making a good many stops, we put the additional man on there to look after the crowded passengers.

Mr. BARTLETT. To do what?

Mr. REYNOLDS. As an extra matter of safety—to look out for the people; that is all.

Mr. BARTLETT. What could an extra brakeman do?

Mr. REYNOLDS. Just help people off and help them on.

Mr. BARTLETT. I do not travel a great deal in the North; but ordinarily, as I understand it, the principal part of the brakeman's duty is, when the train stops, to go back and set the signal, and to notify—

Mr. REYNOLDS. That is the flagman's work?

Mr. BARTLETT. Yes, the flagman's work.

Mr. REYNOLDS. We have a man for that purpose. All the brakeman is there for, and all that those extra brakemen do, is to help the people off and help them on, give the signal to the conductor when they are off and on, and call out the stations.

Mr. BARTLETT. On how many passenger cars could an ordinary brakeman do that?

Mr. REYNOLDS. One brakeman could certainly take care of three; that is, he could call out the stations.

Mr. BARTLETT. At present, do you ordinarily apportion it at the ratio of one man to three cars?

Mr. REYNOLDS. About that; yes, sir.

Mr. BARTLETT. If you put on another one, a fourth one, what would he have to do? What could he do in the way of aiding the railroad or conducing to the comfort or convenience of passengers?

Mr. REYNOLDS. It would just be a matter of convenience to passengers in the way of helping them off and on.

Mr. BARTLETT. In what way?

Mr. REYNOLDS. Just helping them off and on, giving the signal to the conductor, and facilitating the movement of the train; that is about all. It would not afford any particular additional protection.

Mr. TOWNSEND. Is it not possible for a long freight train to break in two, so that perhaps an extra brakeman could be of service under those conditions?

Mr. REYNOLDS. He might be in that case; yes, sir. But the head brakeman would be right there, and if the train broke in two of course it would stop right away. There would be no case of running away; that is, on our road.

Mr. TOWNSEND. You send one man back with the flag?

Mr. REYNOLDS. One man goes back with the flag, and the head brakeman would come back, and the conductor would go ahead.

Mr. TOWNSEND. I can imagine that cases of that kind might occur; but it seems to me they would be very rare indeed.

Mr. REYNOLDS. Very rare; yes, sir—very, very rare indeed.

Mr. TOWNSEND. But everybody has said they could not possibly use them. It has occurred to me that there might be cases when an extra man could facilitate business.

Mr. REYNOLDS. That is all; just the same as having a wreck train continually at some station, all ready to go out.

Mr. KNOWLAND. There might be cases where you could use ten?

Mr. REYNOLDS. Yes, sir.

Mr. TOWNSEND. I want to find out, if I can, if there are any complaints made to you by your men, either through committee or otherwise?

Mr. REYNOLDS. No, sir; I have not heard one, and I have been out on the road a good deal among the men. In fact, I am out among the men most of the time.

Mr. TOWNSEND. Would the complaint be made to you?

Mr. REYNOLDS. They would naturally tell me if they did not have enough help. I have several switching crews under my jurisdiction; the way freights, pick-ups, and all come into my yards; and I have not heard any complaints.

Mr. TOWNSEND. Do you know whether there is anybody in this crowd of witnesses who would be the man to whom the men would go with complaints?

Mr. REYNOLDS. I should think they would go to the train masters; and I know they come to me with any other complaints they have.

If they thought they were getting too much work at different stations, they would come to me with their complaint.

Mr. TOWNSEND. I am trying to find out the origin of this bill, and why it was brought in here. I should like to know, if possible, the opinion of the men who are familiar with those circumstances.

Mr. REYNOLDS. I have not heard any complaint at all in that line.

Mr. ADAMSON. How did the bill get here without an origin? Where did it come from?

The CHAIRMAN. You must remember it happens that we are hearing first from the opponents of the bill.

Mr. TOWNSEND. I should imagine that if there were complaints the men would go to the railroads first with those complaints to see if they could not get a remedy there. That is the natural course, it strikes me; and that is the reason I ask you gentlemen who ought to know.

Mr. REYNOLDS. They always do. On our division, in fact, we could not allow the third man to ride outside, because it is electrified overhead; and we have a rule that the brakemen shall sign an agreement that they will not ride on top over that stretch of 18 miles which is electrified. The only place the man would be able to ride would be on the engine or in the caboose, because we do not allow them to ride out on top of freight trains.

Mr. TOWNSEND. What road is that?

Mr. REYNOLDS. The New Haven Railroad.

The CHAIRMAN. That is only 18 miles?

Mr. REYNOLDS. Eighteen miles of electrification; yes, sir. It goes into Connecticut.

The CHAIRMAN. But you would not expect us to formulate legislation for the entire United States based upon 18 miles of railroad?

Mr. REYNOLDS. I am just saying that it is an interstate road.

The CHAIRMAN. It is not necessary to state that it is interstate. Of course, we know it must be interstate if it is 18 miles long [laughter].

Mr. BARTLETT. It is in New York that it is electrified, I suppose.

Mr. REYNOLDS. The electrification runs out of New York into Stamford, Conn.

STATEMENT OF MR. J. T. JOHNSON, OF SAVANNAH, GA.

Mr. JOHNSON. Mr. Chairman, I am general superintendent of the Central of Georgia Railway. I have been in the railroad service for the past thirty-two years. I started as a brakeman, ran a freight train, a passenger train, acted as yardmaster, general yardmaster, trainmaster, superintendent, and for the past years have been superintendent of 1,915 miles of road in Georgia and Alabama. That road goes through thinly settled country; and we have very poor business, as compared with the gentlemen who have preceded me.

The CHAIRMAN. I would be a little tender about referring in disparaging terms to that part of the country while Mr. Adamson is here.

Mr. JOHNSON. I recognize Mr. Adamson, and Mr. Bartlett, too.

Mr. ADAMSON. I do not understand that the gentleman was indulging in any disparaging remarks. The country down there is country that has not yet been settled at the expense of the Government.

The CHAIRMAN. It is the fault of their Representatives, then.

Mr. ADAMSON. They built it up in spite of you.

Mr. JOHNSON. Since the enactment of these various pieces of legislation requiring safety appliances, electric headlights, automatic couplers, and other special safety devices it has cost our railroad \$1,065,000 to equip the engines and cars that we own, which number about 11,500 at present, all told. On our main lines all of our freight trains and passenger trains are operated with 5 men; some of them have 6. On our branch roads, some of them have 4; but on those roads the train service amounts to 1 passenger train each way a day, 1 freight train each way a day, and in some instances 1 freight train every other day. We have gone over the question of expense on the basis of the present business; and as nearly as we can figure it, it will cost us \$75,000 per annum to put on the third brakeman, as we understand the bill intends. That does not include, by the way, the increase in force provided in the switching bill, which I understand is not now under consideration.

The CHAIRMAN. We should be glad to have you express any views you have on that question, however.

Mr. JOHNSON. Yes, sir. It is also based on the business we are doing now, which is less than it was in 1907, and, I hope, a great deal less than it will be five or ten years from now. In fact, while, as I said, our country is rather thinly populated, we have hopes. We are trying to bring people into the country, and we would like to have some immigrants. We have a good country down there, and anybody that wants to work can make a living there. Therefore there is no reason why our business should not increase. As the business increases, the cost imposed upon us by this bill will necessarily increase; so you can not compute what it will be twenty years from now.

Mr. ADAMSON. This crowd will not go down there, if you tell them they will have to work. [Laughter.] That is a country where you can shake a bush and live without work.

Mr. BARTLETT. It comes as near being a country where a man can live without work as any that I know of.

Mr. JOHNSON. There are some people there that work less than in any other place I have ever lived. [Laughter.] I do not know how they live; but there is not much evidence of work on their part.

Another thing: By adding an extra man to these trains, although we can not conceive where he would be of any benefit except in special cases, you increase our risk. Notwithstanding all of the safety appliances that have been put on locomotives and cars, we all know that trainmen, especially brakemen, always seem to get hurt easier or quicker than anybody else. We are working two brakemen now, and if we increase the number 33 $\frac{1}{3}$ per cent it will just go to increase the personal injuries that much more, according to the way we look at it. Besides, the way the trains are manned now, as we interpret the rules, the front brakeman's duties are pretty well assigned and the rear brakeman's duties are pretty well assigned. If this law should be enacted, it would be almost impossible for us to keep the third man out in the center of the train; I believe we would find that he would either ride in the engine, or, possibly, more in the caboose, and we would have one more man there to interfere with the duties of the two men that are back there now. The conductor has his duties and the flagman has his duties. When you put a third

man there, you all know what kind of company that makes. We do not believe that it would result in any benefit to the service or promote the safety of trains in the least; but it would add an expense to our railroads that is uncalled for, and we think unnecessary, and that we would like very much to avoid, because we need the money very badly to spend for other purposes.

All of our freight trains are equipped with air brakes. We have an air gauge in each caboose. We have a valve in there by which either the conductor or the flagman can apply the brakes from the caboose just as well as the engineer can from the engine. In addition to that, we have a back-up hose with an ordinary angle cock on the rear end of the caboose, so that it does not make any difference whether the man is in the cupola or on the rear platform so far as the braking of the train is concerned. He has it under his control all the time; and there is no need that I can see for any more men on through freight trains. In the case of local freight trains, where we unload the cars and do switching at local stations, we put on more men. Some of our trains have six and some have seven men. But we think this is a question that the House and the Senate should leave to the management of the railroads. We do not believe it would be a good precedent for you gentlemen to say to us how many trainmen we shall have, or how many firemen we shall have, or how many section men, or anyone else. It seems to me those are questions for which the people that are in charge of the operation of the railroads should be held responsible.

Mr. ADAMSON. Would it not be rather difficult, Mr. Johnson, for you at this time to find the extra men if you were required to put them on?

Mr. JOHNSON. No, sir; on the other hand, we could find them without any trouble. But if this law should be enacted, it would, according to my calculations, add about 30,000 men to the train service.

Mr. ADAMSON. You understand that if you are required to do it, all the railroads will be required to do it at once?

Mr. JOHNSON. Yes, sir. We would simply take those men away from the farms or somewhere else, where they are actually making something for the benefit of the country, and put them up there where they would not have a thing to do.

Mr. ADAMSON. I do not refer to going out into other avocations and hunting them up. I mean, are there men waiting for that sort of employment now that you can get?

Mr. JOHNSON. Not in the railroad service; no, sir. We would get them from the farms or other avocations, and they would become consumers instead of producers. If you put that third man up there, he would not be anything except just a knot on a log, so to speak. So far as we are concerned, he would not earn 25 cents a day.

Mr. BARTLETT. May I ask you a question?

Mr. JOHNSON. Yes, sir.

Mr. BARTLETT. Your employees, both on the Central Railroad and the Savannah and Macon roads and elsewhere, are mostly people who have their own labor organizations?

Mr. JOHNSON. Yes, sir; they are all pretty well represented now by their organizations.

Mr. BARTLETT. Has there been any demand made upon the Central Railroad of Georgia by these organizations to put this third man on?

Mr. JOHNSON. No, sir.

Mr. ADAMSON. And the men would come to you if there was a complaint among the employees and a request for more help?

Mr. JOHNSON. Yes, sir; they would come to me, as I handle all of those matters.

Mr. ADAMSON. And you would know it.

Mr. JOHNSON. Several years ago some of the through-freight conductors on one division individually spoke to me about this matter. But I argued the question with them, and, I think, showed them that this additional man was not needed, and I have never heard anything more about it.

Mr. ADAMSON. That was when there were a good many idle men, was it not, Mr. Johnson, that wanted places?

Mr. JOHNSON. That was in 1907, when business was pretty good; and very shortly after that it went to the bad.

Mr. BARTLETT. That was the time when you had to park up your cars and engines?

Mr. JOHNSON. Yes, sir.

Mr. BARTLETT. I remember it very well.

Mr. JOHNSON. Yes, sir.

Mr. ROWE. I should like to ask the gentleman what rules govern on his system—whether or not they are what are known as the "standard rules?"

Mr. JOHNSON. We work by the standard rules of the American Railway Association.

Mr. ROWE. That is all.

STATEMENT OF MR. EDWARD E. HESS, OF BALTIMORE, MD.

Mr. HESS. I am passenger train master of the Pennsylvania Railroad, Baltimore division, and have charge of the passenger operations on the Baltimore division of the Pennsylvania Railroad. I am now in my thirtieth year of employment with the company.

Mr. NEALE. Commencing in what position?

Mr. HESS. As a freight brakeman. I worked up through the various grades to passenger train master.

We feel that this is not only an unnecessary expense but an unnecessary hardship on the railroad companies. From a passenger standpoint I may say, as passenger train master of the Baltimore division, that I can see no necessity whatever for it. We operate about 115 passenger trains a day on this division. It is about a second-rate division of the system. The expense to our system would mean an increased expenditure for trainmen alone of \$1,070,000.

The CHAIRMAN. For trainmen?

Mr. HESS. For trainmen alone—an increase of about 11.5 per cent in operating expenses.

Mr. NEALE. What have you to say as to freight?

Mr. HESS. From a freight standpoint, I can say the same thing—that we see no necessity for this extra brakeman. Our freight trains are now manned by five men—an engineman, a fireman, a conductor,

a flagman, and a brakeman. The trains are all made up with air, and the brakeman that we have to-day is, in a measure, a luxury. He simply rides along so that in case an emergency should arise he would be of some use.

The CHAIRMAN. How do you arrive at the figures you gave us?

Mr. HESS. We have gone into this matter very closely, sir, taking the trains that we are operating to-day; or, rather, these figures are based on our operating expenses for 1908.

The CHAIRMAN. Are you giving the figures for your division?

Mr. HESS. For the entire Pennsylvania system east of Baltimore and Erie.

The CHAIRMAN. I suppose some one else made up the figures as you got them?

Mr. HESS. Yes, sir; the figures are here, all computed, division by division. We computed them for our own division, and they are all compiled as a whole.

The CHAIRMAN. Will you give those to the stenographer?

Mr. NEALE. I will file those with the stenographer, Mr. Chairman. (The statements above referred to are as follows:)

Statement showing the number of men employed on passenger and freight trains on the several grand divisions of the Pennsylvania Railroad under the conditions stated.

| | Western Pennsylvania division. | Eastern Pennsylvania division. | Buffalo and Allegheny Valley division. | Philadelphia, Baltimore and Washington Railroad. | West Jersey and Seashore Railroad. | Philadelphia Terminal division. | Erie division and Northern Central Railway. | New Jersey division. |
|-------------------------------------------------------------------------|--------------------------------|--------------------------------|----------------------------------------|--------------------------------------------------|------------------------------------|---------------------------------|---------------------------------------------|----------------------|
| On passenger, mail, or express trains composed of less than 3 cars..... | 5 | 5 | 5 | 5 | 5 | ----- | 5 | 4-5 |
| On passenger, mail, or express trains composed of 3 cars or more..... | 6 | 5-7 | 5-7 | 5 | 5-6 | ----- | 5 | 5-6 |
| On freight trains composed of less than 25 cars..... | 6 | 5 | 5-6 | 5 | 7-8 | 4 | 5 | 5 |
| On freight trains composed of 25 cars or more..... | 6 | 5-6 | 5-6 | 5-6 | 7-8 | 4 | 5-6 | 5 |
| On trains other than those described above..... | 6 | 5 | 5 | 4 | 5 | 4 | 6 | 5 |
| On trains consisting of the locomotive only without cars.. | 2 | 2 | 2 | 2 | 3 | 2 | 2 | 2 |

Statement showing, by divisions, the wages paid passenger trainmen on the Pennsylvania Railroad in 1908, and the wages which would have been paid had House bill 10888 been in effect, with increase and per cent of increase.

| Division. | Wages paid in 1908. | Wages which would have been paid in 1908 under House bill 10888. | Increase. | Per cent of increase. |
|---------------------------------------|------------------------|---------------------------------------------------------------------------------|-------------|-----------------------------|
| New York..... | \$425,610.21 | \$494,914.89 | \$69,304.68 | 16.3 |
| Amboy..... | 112,225.99 | 135,574.59 | 23,348.60 | 20.8 |
| Belvidere..... | 34,814.18 | 42,845.59 | 8,031.41 | 23.1 |
| Total..... | 572,650.38 | 673,335.07 | 100,684.69 | 17.6 |
| West Jersey and Seashore..... | 52,074.03 | 97,050.25 | 44,976.22 | 86.4 |
| Philadelphia Terminal..... | 115,232.97 | 132,290.04 | 17,057.07 | 14.8 |
| Maryland..... | 308,905.11 | 354,980.33 | 46,075.22 | 14.9 |
| Delaware..... | 55,258.03 | 69,878.00 | 14,619.97 | 26.5 |
| Central..... | 92,057.68 | 104,813.80 | 12,756.12 | 13.9 |
| Total..... | 456,220.82 | 529,672.13 | 73,451.31 | 16.1 |
| Philadelphia..... | 528,821.91 | 554,821.08 | 25,999.17 | 4.9 |
| Middle..... | 326,955.05 | 351,707.68 | 24,752.63 | 7.6 |
| Schuylkill..... | 123,221.20 | 137,343.59 | 14,122.39 | 11.5 |
| Bedford..... | 10,023.41 | 13,715.09 | 3,691.68 | 36.8 |
| Tyrone..... | 42,305.98 | 49,646.86 | 7,340.88 | 17.4 |
| Bellwood..... | 10,526.18 | 12,044.77 | 1,518.59 | 14.4 |
| Cresson..... | 29,665.01 | 32,229.16 | 2,564.15 | 8.6 |
| Total..... | 1,071,518.74 | 1,151,508.23 | 79,989.49 | 7.5 |
| Pittsburg..... | 235,607.31 | 264,804.20 | 29,196.89 | 12.4 |
| Monongahela..... | 20,489.96 | 25,596.55 | 5,106.59 | 24.9 |
| Conemaugh..... | | | | |
| Total..... | 256,097.27 | 290,400.75 | 34,303.48 | 13.4 |
| Buffalo..... | 54,604.82 | 66,250.84 | 11,646.02 | 21.3 |
| Chautauqua..... | 9,861.04 | 20,266.40 | 10,405.36 | 105.5 |
| Allegheny..... | 71,839.53 | 88,853.69 | 17,014.16 | 23.7 |
| Total..... | 136,305.39 | 175,370.93 | 39,065.54 | 28.6 |
| Renoovo..... | 84,618.34 | 92,897.54 | 8,279.20 | 9.8 |
| Williamsport and Susquehanna..... | 126,480.84 | 137,937.89 | 11,457.05 | 9.1 |
| Sunbury, Lewistown, and Shamokin..... | 73,851.51 | 84,724.28 | 10,872.77 | 14.7 |
| Baltimore..... | 203,742.12 | 226,760.67 | 23,018.55 | 11.3 |
| Elmira..... | 23,946.96 | 29,628.04 | 5,681.08 | 23.7 |
| Total..... | 512,639.77 | 571,948.42 | 59,308.65 | 11.6 |
| Grand total..... | 3,172,739.37 | 3,621,575.82 | 448,836.45 | 14.1 |

Statement showing, by divisions, the wages paid freight trainmen on the Pennsylvania Railroad in 1908 and the wages which would have been paid had House bill 10888 been in effect, with increase and per cent of increase.

| Division. | Wages paid in 1908. | Wages which would have been paid in 1908 under House bill 10888. | Increase. | Per cent of increase. |
|---------------------------------------|------------------------|---------------------------------------------------------------------------------|-------------|-----------------------------|
| New York..... | \$368,211.95 | \$459,858.12 | \$91,646.17 | 24.9 |
| Amboy..... | 118,224.99 | 120,717.25 | 2,492.26 | 2.1 |
| Belvidere..... | 55,771.45 | 61,374.75 | 5,603.30 | 10.5 |
| Total..... | 542,208.39 | 641,950.12 | 99,741.73 | 18.2 |
| West Jersey and Seashore R. R. | | | | |
| Philadelphia Terminal..... | 366,693.01 | 376,971.41 | 10,278.40 | 2.8 |
| Maryland..... | 249,149.63 | 291,047.95 | 41,898.32 | 16.8 |
| Delaware..... | 121,139.69 | 125,509.11 | 4,369.42 | 3.6 |
| Central..... | 44,569.80 | 44,870.76 | 300.96 | .7 |
| Total..... | 414,859.12 | 461,427.82 | 46,568.70 | 11.2 |
| Philadelphia..... | 1,007,953.05 | 1,027,469.57 | 19,516.52 | 1.9 |
| Middle..... | 871,568.23 | 894,206.57 | 22,638.34 | 2.6 |
| Schuylkill..... | 136,762.75 | 138,263.15 | 1,500.40 | 1.1 |
| Bedford..... | 26,611.31 | 27,899.59 | 1,288.28 | 4.8 |
| Tyrone..... | 195,620.83 | 210,548.95 | 14,928.12 | 7.6 |
| Bellwood..... | 80,841.61 | 84,435.16 | 3,593.55 | 4.4 |
| Cresson..... | 120,418.63 | 124,638.79 | 4,220.16 | 3.5 |
| Total..... | 2,439,776.41 | 2,507,461.78 | 67,685.37 | 2.8 |
| Pittsburg..... | 711,886.29 | 871,015.94 | 159,129.65 | 22.3 |
| Monongahela..... | 31,226.00 | 39,526.18 | 8,300.18 | 26.6 |
| Conemaugh..... | 44,248.28 | 50,106.12 | 11,857.84 | 26.8 |
| Total..... | 787,360.57 | 966,648.24 | 179,287.67 | 22.8 |
| Buffalo..... | 172,400.10 | 220,193.46 | 47,793.36 | 27.7 |
| Chautauqua..... | 22,338.16 | 44,076.30 | 22,338.14 | 100.0 |
| Allegheny..... | 159,575.11 | 191,841.30 | 32,266.19 | 20.2 |
| Total..... | 354,313.37 | 456,711.06 | 102,397.69 | 28.9 |
| Renovo..... | 314,633.56 | 323,623.86 | 8,990.30 | 2.7 |
| Williamsport and Susquehanna..... | 373,319.62 | 405,102.51 | 31,782.89 | 8.5 |
| Sunbury, Lewistown, and Shamokin..... | 107,094.76 | 130,993.65 | 23,898.89 | 22.3 |
| Baltimore..... | 258,803.62 | 285,655.86 | 26,852.24 | 10.4 |
| Elmira..... | 204,627.87 | 229,024.36 | 24,396.49 | 11.9 |
| Total..... | 1,258,479.43 | 1,374,400.24 | 115,920.81 | 9.2 |
| Grand total..... | 6,163,690.30 | 6,785,570.67 | 621,880.37 | 10.9 |

Summary of statements showing wages paid trainmen on the Pennsylvania Railroad in 1908 and the wages which would have been paid had House bill 10888 been in effect, with increase and per cent of increase.

FREIGHT.

| Division. | Wages paid in 1908. | Wages which would have been paid in 1908 under House bill 10888. | Increase. | Per cent of in- crease. |
|-----------------------------------------------------------|------------------------|---------------------------------------------------------------------------------|-------------|-------------------------------|
| New Jersey..... | \$542,208.39 | \$641,950.12 | \$99,741.73 | 18.2 |
| West Jersey and Sea Shore..... | | | | |
| Philadelphia Terminal..... | 366,693.01 | 376,971.41 | 10,278.40 | 2.8 |
| Philadelphia, Baltimore and Washington Rail- road..... | 414,859.12 | 461,427.82 | 46,568.70 | 11.2 |
| Eastern Pennsylvania..... | 2,439,776.41 | 2,507,461.78 | 67,685.37 | 2.8 |
| Western Pennsylvania..... | 787,360.57 | 966,648.24 | 179,287.67 | 22.8 |
| Buffalo and Allegheny Valley division..... | 354,313.37 | 456,711.06 | 102,397.69 | 28.9 |
| Erie and Northern Central..... | 1,258,479.43 | 1,374,400.24 | 115,920.81 | 9.2 |
| Total..... | 6,163,690.30 | 6,785,570.67 | 621,880.37 | 10.9 |

PASSENGER.

| | | | | |
|---------------------------------------------------|--------------|--------------|--------------|------|
| New Jersey..... | \$572,650.38 | \$673,335.07 | \$100,684.69 | 17.6 |
| West Jersey and Seashore..... | 52,074.03 | 97,050.25 | 44,976.22 | 86.4 |
| Philadelphia Terminal..... | 115,232.97 | 132,290.04 | 17,057.07 | 14.8 |
| Philadelphia, Baltimore and Washington R. R. | 456,220.82 | 529,672.13 | 73,451.31 | 16.1 |
| Eastern Pennsylvania..... | 1,071,518.74 | 1,151,508.23 | 79,989.49 | 7.5 |
| Western Pennsylvania..... | 266,097.27 | 290,400.75 | 34,303.48 | 13.4 |
| Buffalo and Allegheny Valley Division..... | 136,305.39 | 175,370.93 | 39,065.54 | 28.6 |
| Erie and Northern Central..... | 512,639.77 | 571,948.42 | 59,308.65 | 11.6 |
| Total..... | 3,172,739.37 | 3,621,575.82 | 448,836.45 | 14.1 |

PASSENGER AND FREIGHT.

| | | | | |
|---------------------------------------------------|----------------|----------------|--------------|------|
| New Jersey..... | \$1,114,858.77 | \$1,315,285.19 | \$200,426.42 | 18.0 |
| West Jersey and Seashore..... | 52,074.03 | 97,050.25 | 44,976.22 | 86.4 |
| Philadelphia Terminal..... | 481,925.98 | 509,261.45 | 27,335.47 | 5.7 |
| Philadelphia, Baltimore and Washington R. R. | 871,079.94 | 991,099.95 | 120,020.01 | 13.8 |
| Eastern Pennsylvania..... | 3,511,295.15 | 3,658,970.01 | 147,674.86 | 4.2 |
| Western Pennsylvania..... | 1,043,457.84 | 1,257,048.99 | 213,591.15 | 20.5 |
| Buffalo and Allegheny Valley Division..... | 490,618.76 | 632,081.99 | 141,463.23 | 28.8 |
| Erie and Northern Central..... | 1,771,119.20 | 1,946,348.66 | 175,229.46 | 9.9 |
| Grand total..... | 9,336,429.67 | 10,407,146.49 | 1,070,716.82 | 11.5 |

Statement showing the increased number of men that would have been required on passenger and freight trains separately on the Pennsylvania Railroad lines east of Pittsburg and Erie during the year 1908 had House bill No. 10888 been in effect that year; also objections to increased number of men on passenger and freight trains—Continued.

| Division. | Increase in number of men. | | | Objections to increased number of men as proposed under House bill No. 10888. |
|-------------------------------|----------------------------|------------|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | Passenger. | Freight. | Total. | |
| New York..... | 79 | 130 | 209 | (No necessity for additional men, as almost all trains now have 100 per cent air. They would not add to the safety of trains, and idle men in crews are objectionable from an efficiency point of view. Additional men would entail considerable unnecessary expense.) |
| Amboy..... | 29 | 3 | 32 | |
| Belvidere..... | 9 | 8 | 17 | |
| Total..... | 117 | 141 | 258 | |
| West Jersey and Seashore..... | 63 | | 63 | Would merely furnish vocations for men entirely unnecessary; would be loading the service with a superabundance of men, and would entail an unnecessary expense. Crews which we now have, consisting of a conductor and two brakemen, perform the work with satisfaction and safety to the public, employees, and equipment, and we can see no good reason why additional men should be required. |
| Philadelphia Terminal..... | 14 | 9 | 23 | |
| Total..... | 93 | 47 | 140 | |
| Maryland..... | 58 | 41 | 99 | Additional men on trains would mean increased expense without an adequate return for the service rendered. Most serious objection would be the moral effect of having more men than are necessary to perform the service. Additional brakemen are now employed on freight trains doing local work and on through passenger trains having Pullman cars; a Pullman conductor and porter are assigned to each car. |
| Delaware..... | 19 | 5 | 24 | |
| Central..... | 16 | 1 | 17 | |
| Total..... | 93 | 47 | 140 | |
| Philadelphia..... | 39 | 24 | 63 | Passage of the bill would mean increased expense to which the company would be subjected, we fail to see any merit or advantages by the increased number of men. In our judgment they are not warranted to protect the traveling public, and the fact that no accident can be traced to this source is a strong argument against the bill accomplishing any additional safety to the traveling public or to fellow-employees. |
| Middle..... | 30 | 32 | 62 | |
| Schuylkill..... | 16 | 2 | 18 | |
| Bedford..... | 6 | 3 | 9 | |
| Tyrone..... | 9 | 23 | 32 | |
| Bellwood..... | 2 | 5 | 7 | |
| Cresson..... | 3 | 6 | 9 | |
| Total..... | 105 | 95 | 200 | |
| Pittsburg..... | 47 | 201 | 248 | Provisions of bill do not in any manner increase safety of employees or patrons, and the only result would be the employment of additional men with increased expense. Bill should be opposed in every way possible, as there is nothing in it to bring about better results; its passage would place a burden upon railroads without any compensating advantage, and additional men on trains would act as a menace to safety rather than for its promotion because of the fact that they would not have sufficient work to keep them constantly employed. Under present rules and regulations governing train movements, with standard equipment, and the required number of air brakes in service, the brakemen, under ordinary circumstances, are not involved particularly in the safety of train movements, the stopping of a train being entirely in the hands of the engineman. |
| Monongahela..... | 6 | 10 | 10 | |
| Conemaugh..... | 6 | 13 | 19 | |
| Total..... | 53 | 224 | 277 | |

Statement showing the increased number of men that would have been required on passenger and freight trains separately on the Pennsylvania Railroad lines east of Pittsburg and Erie during the year 1908 had House bill No. 10888 been in effect that year; also objections to increased number of men on passenger and freight trains.

| Division. | Increase in number of men. | | | Objections to increased number of men as proposed under House bill No. 10888. |
|------------------------------------------|----------------------------|----------|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | Passen- ger. | Freight. | Total. | |
| Buffalo..... | | | | Bill would not promote safety of either passengers or employees. Passage of it would so largely increase expenses that in self-defense the railroads would be compelled to double-head trains, which would result in a reduction in the number of men per train rather than an increase, as is intended by the bill. An additional brakeman would simply be one more man on the crew, with no work to do. Since the use of air brakes has become universal, the brakemen, especially on double-track railroads, will sometimes ride the entire length of the run without any work of any kind. The introduction of the block system safeguards train operations, operators under this system virtually becoming flagmen, thus increasing the number of men involved in the protection of trains. In passenger service where the business is growing bill would necessarily retard increasing the service, additional trains would not be put on, on account of increased cost, as long as additional coaches to existing trains would care for the travel, and in this way it would work to the disadvantage of the general traveling public. |
| Chautauqua | 32 | 119 | 151 | |
| Allegheny..... | | | | |
| Renovo..... | 10 | 12 | 22 | Bill would mean considerable additional expense on all divisions and it is entirely unnecessary to increase the number of trainmen, as there are now a sufficient number of men to handle trains with safety. |
| Williamsport and Susque- hanna..... | 13 | 44 | 57 | |
| Sunbury, Lewistown, and Shamokin..... | 14 | 35 | 49 | |
| Baltimore..... | 29 | 36 | 65 | |
| Elmira..... | 7 | 27 | 34 | |
| Total..... | 73 | 154 | 227 | |
| Grand total..... | 550 | 789 | 1,339 | |

Mr. NEALE. Mr. Hess, how many passenger crews have you under your jurisdiction?

Mr. HESS. I have 23 passenger crews.

Mr. NEALE. And how many freight crews?

Mr. HESS. About thirty-three.

Mr. NEALE. Have any complaints been made to you?

Mr. HESS. No, sir.

The CHAIRMAN. Would they be made to you?

Mr. HESS. Yes, sir. As passenger train master, passenger complaints would be made to me directly. In the event of my failure to adjust a complaint, it would be carried up to the superintendent, and on up as far as the complainant desired.

Mr. NEALE. Then, do I understand you to say that after a careful examination of this bill you do not see any necessity for it?

Mr. HESS. No necessity whatever for it; no, sir.

Mr. NEALE. And this additional man would simply, as you say, be a luxury?

Mr. HESS. Yes, sir; from a passenger standpoint.

Mr. BARTLETT. A luxury, or a hindrance?

Mr. NEALE. A hindrance.

The CHAIRMAN. Does this bill propose to require more than one additional man on passenger trains, as applied to your road?

Mr. HESS. One additional man for three or more cars.

The CHAIRMAN. How many men do you now have on your passenger trains?

Mr. HESS. We now have an engineman, a fireman, a conductor, a baggage master, and a brakeman on our main line.

The CHAIRMAN. So far as the passenger cars are concerned, you have a flagman and a conductor? Is that right?

Mr. HESS. No, sir; not on passenger trains. We have a brakeman, or, as we term him, a flagman, on passenger trains.

The CHAIRMAN. That is what I say.

Mr. HESS. And a baggage master in addition.

The CHAIRMAN. So far as the passenger cars are concerned, you have a flagman and a conductor?

Mr. HESS. Yes, sir.

The CHAIRMAN. That is all?

Mr. HESS. Yes, sir. We enlarge on that as the needs of the service may require. In the case of express trains run through with six or eight cars, making no stops, we add no man to that train. Should it be a local train with that number of cars, we would add to it according to the conditions governing the movement of the train. There is a difference in their character and the number of people that are handled.

The CHAIRMAN. On these long passenger trains, which sometimes have twelve or fifteen cars, and certainly eight or ten passenger coaches, do you think one brakeman is sufficient?

Mr. NEALE. Mr. Hess (if you will permit me, Mr. Chairman), on these long passenger trains you also have Pullman cars, do you not, with their porters?

The CHAIRMAN. Let me ask the question.

Mr. NEALE. I beg your pardon; I thought you were through.

The CHAIRMAN. The Pullman porters are not trainmen, are they?

Mr. HESS. They are subject to our rules, and must obey the orders of the conductor. Therefore, we consider them as part of the train service.

The CHAIRMAN. What would they do?

Mr. HESS. They would obey any orders the conductor might issue to them, just the same as he would issue them to the brakeman, sir. They have to carry out the rules of the company.

The CHAIRMAN. Of course, none of us have ever traveled on these trains. Suppose you tell us about that. I do not doubt that you have such rules, and that they are theoretically subject to the orders of the conductor; but practically they amount to nothing.

Mr. HESS. I assure you, sir, that that is not the case on the Pennsylvania system. The conductors are not lax in seeing that their subordinates discharge their duties.

The CHAIRMAN. Well, I have been coming to Washington now for a good many years.

Mr. ESCH. You would not consider a rear flagman a luxury, would you?

Mr. HESS. No, sir; I did not state that. I did not wish to be understood, sir, as saying that the flagman is a luxury. I meant that the additional brakeman is a luxury.

Mr. BARTLETT. Is there any necessity for more than one rear flagman on a train?

Mr. HESS. Oh, no, sir.

Mr. ADAMSON. Sometimes a superfluity is not a luxury, I suppose.

Mr. HESS. That is right, sir.

The CHAIRMAN. Take the case of these long passenger trains: Your flagman is generally in the rear coach, the rear Pullman, is he not?

Mr. HESS. Yes, sir; the rear car.

The CHAIRMAN. When it is a Pullman you have a number of coaches in front in which there is no train man at all?

Mr. HESS. Oh, yes; we have a number of brakemen, sir. On our large trains that have probably three or four coaches we would have a brakeman under such conditions, an additional brakeman to look after those coaches.

The CHAIRMAN. You said you did not; and that is the reason I am asking you the question. You said you did not, as I understood you, on the through trains.

Mr. HESS. I mean as a fixed proposition. As a fixed proposition we do not; no, sir. I meant to convey the impression that we regulate that according to conditions.

The CHAIRMAN. I am trying to find out what the conditions are. It is a fixed proposition that you have that character of trains in constant service. Do you have an additional man on those trains?

Mr. HESS. I would say that we do if we have four or five coaches. If we have one or two we do not, sir.

The CHAIRMAN. How is it in case you have three?

Mr. HESS. Possibly there would then be a brakeman added.

The CHAIRMAN. Not "possibly;" but is there? You ought to know. I do not.

Mr. HESS. On our particular division there is not, because we do not run three coaches; it is a rare occurrence for us to have three coaches.

The CHAIRMAN. What do you have—one, or five?

Mr. HESS. The major portion of our trains are made up of express, baggage, and Pullman cars, with rarely more than two coaches in a passenger train. On divisions where they do have express trains that carry more than two coaches, as a rule they have the second brakeman.

The CHAIRMAN. On your division you do not put on an extra man for the two coaches at all?

Mr. HESS. No, sir.

The CHAIRMAN. You have no trainman in connection with those cars?

Mr. HESS. No, sir.

The CHAIRMAN. Or any other cars, except, as you say, your rear car, on which you have the flagman and the Pullman porter?

Mr. HESS. Yes, sir.

The CHAIRMAN. The porters are supposed to be trainmen under your rules?

Mr. HESS. Yes, sir. We run some few trains with train porters. On the higher-grade trains we have train porters to look after the coaches.

The CHAIRMAN. What do you mean by "higher-grade trains?"

Mr. HESS. The through trains—express trains that make fast schedules and express runs.

The CHAIRMAN. A man of that kind is a trainman?

Mr. HESS. Yes, sir.

The CHAIRMAN. Is that on your division?

Mr. HESS. Yes, sir. But he is not a brakeman in the sense in which a brakeman's duties are defined.

The CHAIRMAN. Is he not supposed to brake if necessary?

Mr. HESS. Oh, no, sir!

Mr. ADAMSON. He waits on the passengers on the train.

Mr. HESS. That is the idea; he waits on the passengers.

The CHAIRMAN. I understood you to say that the Pullman porters were supposed to act as brakemen, subject to the orders of the conductor.

Mr. HESS. They are supposed to discharge, under the orders of the conductor, any duty that may be assigned them by the conductor.

The CHAIRMAN. That might include braking?

Mr. HESS. Oh, no; there is no braking required, because of the fact that we have all air.

Mr. ADAMSON. Sometimes there is breaking of the tips.

The CHAIRMAN. The air sometimes gives out, does it not?

Mr. HESS. When the air gives out we go no farther than the first telegraph office, and then arrange to handle the train along different lines. The air usually gives out from the engine standpoint, and we simply get another engine.

Mr. CALDER. How many trainmen are there on these regular express trains, running from New York to Washington? What is the regular train crew on the 3 o'clock train going out of here every afternoon, for instance?

Mr. HESS. I have no connection with that division and can only speak in a general way. They have quite a number of additional brakemen on their trains. I can only speak for my own division as an actual fact.

The CHAIRMAN. I thought that was your division.

Mr. HESS. No, sir; my division is Baltimore to Harrisburg.

Mr. NEALE. I can have here to-morrow a gentleman connected with that special division, and he can answer that question with accuracy.

The CHAIRMAN. I thought Mr. Hess was connected with that one.

Mr. NEALE. No; he runs from Baltimore to Harrisburg.

The CHAIRMAN. I thought the Baltimore division was the one from here to Baltimore and on through.

Mr. NEALE. No, sir; from Baltimore to Harrisburg.

The CHAIRMAN. Is that all?

Mr. ADAMSON. I should like to ask Mr. Johnson a question, Mr. Chairman.

FURTHER STATEMENT OF MR. J. T. JOHNSON, OF SAVANNAH, GA.

Mr. ADAMSON. Mr. Johnson, I have in mind some hills in my neighborhood over which your road runs—Lookout Mountain, Missionary Ridge, Red Mountain, Pine Mountain, and so on. I suppose they constitute the worst pulls that you have on your 9,000 miles, do they not?

Mr. JOHNSON. One thousand nine hundred miles, sir.

MR. ADAMSON. Yes; 1,900 miles. I want to ask you if at any of those places you have ever had any trouble on account of an insufficient number of train men?

MR. JOHNSON. No, sir. The heaviest grade we have is over Missionary Ridge and up one side of Lookout Mountain, in the northern part of Georgia, right on the edge of Tennessee. The grade over Missionary Ridge is $1\frac{1}{2}$; and the 22 by 30 inch engine, which weighs 200,000 pounds on the drivers, equipped with two air-brake pumps, has no trouble in controlling the train in either direction up there. We handle it with air altogether. The other grades you speak of are 66 feet to the mile, which, while they look pretty steep to us, are not very steep when you compare them with the Rocky Mountains and the Allegheny Mountains, which these other gentlemen talk about.

MR. ADAMSON. The one over Pine Mountain, in Harris County, is pretty steep, is it not?

MR. JOHNSON. Yes, sir; that is one-half per cent.

MR. ADAMSON. You have never had any trouble there?

MR. JOHNSON. No, sir; not even when we operated that as a narrow-gauge road and did not have anything but hand brakes.

I should like to say another thing for the information of the gentlemen present. I began railroading on the Chesapeake and Ohio Railroad in Virginia in 1879, and moved to Georgia in 1886. The gauge was changed on the Southern road south of the Ohio River in June, 1886, and I went down in February and began to work for the Central Railroad, the same road I am with now. I was very much surprised to see the way they handled freight trains in those days. Just after the gauge was changed (which was many years before air brakes were put on freight cars in the South) we handled what we termed a heavy mogul engine, which was a six-wheel connected engine with full truck, and at that time the Central Railroad did not have any brakes except on the engine and on the caboose. I have been on many and many a train, operating fifteen to twenty-five and twenty-eight cars, when we would run three and four sections just by putting the brake on the caboose and on the engine, and some of them were one per cent grades. Of course, the cars were light in those days. You could not do it now. But it just shows what we used to have to do, and in those days we only had a brakeman and a flagman. There was not anything else for them to do. Now we have no hand brakes at all to attend to. Everything is done by the air or the power brake.

MR. ADAMSON. That is all I wanted to ask you.

MR. LITTLEPAGE. Mr. Chairman, there are yet several witnesses who have information on this "full-crew" bill, but we feel that a continuation of the testimony would be cumulative. We have one witness here who has some figures that may be of value to the committee in regard to grade crossings, etc., but he has mislaid them temporarily. If it is the committee's pleasure we will now proceed with the consideration of the boiler-inspection bill.

THE CHAIRMAN. I suggest to you that the gentlemen that you have here upon this bill who have not been heard present as speedily as possible written statements of anything they wish to submit, and we will put them in the hearings.

MR. LITTLEPAGE. Very well.

Mr. NEALE. Mr. Chairman, I shall avail myself of that privilege by filing some figures, then, that were referred to by Mr. Hess.

The CHAIRMAN. Very well.

Mr. FAULKNER. Mr. Chairman, I should like to ask permission to file a statement in connection with this matter which was sent me by the Denver and Rio Grande Railroad. I thought I had brought it down, but I have not; and no person has appeared here from that road.

The CHAIRMAN. Very well.

Mr. FAULKNER. That is one of the very hilly roads of the country.

The CHAIRMAN. Very well. Now, let me ask you this question: How many people have you here from abroad to be heard on any of these bills?

Mr. FAULKNER. We do not propose, Mr. Chairman, to produce any except on the boiler bill between now and to-morrow week. That is as far as we think we can get; because we have a number of experts on that matter that will take some time.

The CHAIRMAN. You did set aside to-morrow for the dangerous freight matter.

Mr. LITTLEPAGE. The bills relating to explosives.

Mr. FAULKNER. Oh, yes; but that subject will only take a very short time.

The CHAIRMAN. The reason I asked the question was with a view to ascertaining whether or not it would be necessary, in order to accommodate you, to work the committee a little hard by having an evening session.

Mr. FAULKNER. Oh, no, sir. Nobody wants to work at night. [Laughter.] I am satisfied that most of these gentlemen are going to dinners to-night.

Mr. ADAMSON. I should like to have the statement go in the record that the members of the committee are anxious to work at night. [Laughter.]

Mr. BARTLETT. Mr. Chairman, may I make a request?

The CHAIRMAN. Certainly.

Mr. BARTLETT. Mr. Munson, who is the superintendent of the Georgia Southern and Florida Railroad, is in the city. He said he would be here some time this evening; but he does not desire a hearing by the committee. He said that if he prepared anything, however, he would like to have it printed; and I ask that I may have permission to file it.

The CHAIRMAN. We will publish anything of that sort that is presented soon.

Mr. BARTLETT. Yes, sir. I will call his attention to it. He is preparing a statement, and asked me to permit him to present it. He was engaged at a meeting, and could not get here.

(The committee thereupon proceeded to the consideration of other bills pending before it.)

BOILER-INSPECTION BILLS.

After hearing other matters, the committee (at 3.30 o'clock p. m.) proceeded to the consideration of the various bills pending before it dealing with boiler inspection, viz., H. R. 9786, H. R. 9965, and H. R. 10889.

STATEMENT OF MR. THEODORE H. CURTIS, OF LOUISVILLE, KY.

Mr. CURTIS. Mr. Chairman, I am here on behalf of the Louisville and Nashville Railroad Company.

The CHAIRMAN. You appear in reference to the boiler-inspection bills?

Mr. CURTIS. Yes, sir. There are three bills under consideration, introduced by Mr. Campbell, of Kansas; Mr. Kinkaid, of Nebraska; and Mr. Martin, of Colorado.

The CHAIRMAN. The first bill is No. 9786.

Mr. CURTIS. The bills are H. R. 9786, H. R. 9965, and H. R. 10889. The Martin bill will be the only bill considered by us, inasmuch as it includes all the features covered by the other two bills, if that is satisfactory.

I will now proceed to consider this bill by its sections.

Section 1, page 1, lines 10 to 12, and page 2, lines 1 to 4, provide:

The boiler of which is not equipped with a steam-pressure gauge, safety valve, gauge cocks, or try cocks, a water glass showing the height of the water in such boiler, and having a shut-off cock, or shut-off valve, at each end of such glass, and all such cocks and valves shall be so constructed and maintained that they can be easily opened and closed by hand.

The use of a steam gauge, safety valve, gauge cocks, or try cocks is a universal practice on all locomotives in the United States, to the best of our knowledge. The use of a water glass is not universal. The majority of the locomotives in the United States are equipped with a water glass, but it not an appliance to promote safety. It is an appliance for the convenience of the enginemen. It is the consensus of opinion that the water glass is unreliable as a means for accurately ascertaining the height of water in the boiler, at some times, and it must not be solely depended upon; but the gauge, or try cocks, are appliances to be depended upon for ascertaining the height of the water in the boiler.

The pressure to operate the gauge cock increases in direct proportion to the pressure on the boiler. That is, if there is 200 pounds of pressure on the boiler, there is 200 pounds of pressure to force the water or steam through the gauge cocks. The pressure to operate the water glass bears no relation to the pressure on the boiler—it is merely a case of water seeking its own level. A column of water six inches high weighs $3\frac{1}{2}$ ounces per square inch. As this is about the average height of water in a water glass, there would be only $3\frac{1}{2}$ ounces of pressure to actuate the water in the water glass. The 200 pounds of pressure on the boiler is equalized on both sides of the water in the water glass. Therefore, this 200 pounds of pressure does not have any effect toward actuating the water in the water glass. That is, it is squeezed on both sides, and has only $3\frac{1}{2}$ ounces of pressure on it. As the accuracy in indicating the height of the water in the boiler by the gauge cocks or water glass is dependent directly upon the effective pressures, and the effective pressure on the gauge cocks is 200 pounds (that is, for boilers having 200 pounds pressure; if they have 150 pounds pressure it is 150 pounds), while the effective pressure on the water glass is about $3\frac{1}{2}$ ounces, there is 914 times more pressure to operate the gauge cocks than there is to operate the water glass.

The distinction between water and steam in the gauge cocks depends upon the hearing of the enginemen; and the determining of the height of water in the water glass is dependent upon the sight of the enginemen. It is necessary that the full pressure of the boiler shall come directly against the water glass. It is well known to all that glass is very brittle, especially so when subjected to pressure and sudden changes in temperature. It is a fact that a great many enginemen have been injured, and many of them have lost the sight of one or both eyes, by the breaking of water glasses, the flying glass injuring the eye. To prevent the flying of pieces of broken glass occasioned by the explosion of the water glass, many devices have been used to incase or shield the water glass. These devices are made of metal, which is not transparent, or very heavy glass; and these shields are a hindrance to the enginemen in ascertaining the height of the water in the glass. They can not see through them well. They get dirty in just a very short time.

There are several railroad systems in the United States that consider the water glass an element of danger, and do not use it on any of their locomotives. There is one railroad in the United States that has 900 locomotives operating without the water glass; and this railroad is operating its locomotives as safely as any railroad that uses the water glass.

The CHAIRMAN. What railroad do you refer to?

Mr. CURTIS. The Louisville and Nashville. That being my home road, I did not want to mention it unless you wished to know it.

As the water glass is not an additional precaution, and not a device for safety, its use should not be made compulsory.

Are there any questions on that matter that you gentlemen would like to ask?

Mr. ESCH. To what extent does your custom obtain on the other railroad systems, if you know?

Mr. CURTIS. I do not know. There are several railroads that have it, but I do not know them.

Mr. STAFFORD. In the case of a railroad placing an order for locomotives, are there any specifications prescribed as to the appurtenances that you have just been describing with which they shall be equipped?

Mr. CURTIS. Yes.

Mr. STAFFORD. For instance, in placing an order with the American Locomotive Works, or the Baldwin works, would the railroads prescribe these equipments?

Mr. CURTIS. A great many of them would; the large majority would. The smaller lines, which do not make their own specifications, know that these devices are applied.

Mr. STAFFORD. Is there any accepted type of locomotive, so far as these attachments are concerned, that is turned out by the leading locomotive works?

Mr. CURTIS. Do you mean in regard to the water glass, or the appurtenances?

Mr. STAFFORD. The water glass and these other things—the safety valves and gauge cocks and try cocks?

Mr. CURTIS. I said that the use of the steam gauge, safety valve, gauge cocks, or try cocks, is a universal practice on all locomotives

in the United States, to the best of our knowledge. I do not know of an engine that has not got them on it.

Mr. STAFFORD. My query was directed as to whether there was any accepted type which the standard locomotive works turn out.

Mr. CURTIS. In the case of the appurtenances referred to, I do not know of any accepted appliances except the water glass.

Mr. BARTLETT. Do you mean to say by that that there is no accepted type in which they uniformly put on the water glass? Is that what you mean?

Mr. CURTIS. How is that?

Mr. BARTLETT. Do you mean to say that there is no standard type of engine in which the water glass is required as a necessary part of the equipment?

Mr. CURTIS. I do not know of any.

Mr. BARTLETT. That is what you mean to say, then?

Mr. STAFFORD. Do I understand that the gauge cock or try cock determines the height of the water, in lieu of the water glass?

Mr. CURTIS. It will determine whether there is steam or water to pass through the cock, by opening it, if there is any pressure.

Mr. STAFFORD. But it does not determine the height of the water in the boiler?

The CHAIRMAN. That would determine it.

Mr. CURTIS. It does if the water is right there.

The CHAIRMAN. It determines whether it is as high as the hole.

Mr. CURTIS. As high as the hole; yes. If a barrel had the bung out, and was filled up to the bung, it would run out. That is the way it is with the gauge cock.

Mr. MARTIN. Mr. Chairman, may I ask the witness a question?

The CHAIRMAN. Yes.

Mr. MARTIN. I should like to ask the gentleman what make of locomotives are used on the Louisville and Nashville Railroad?

Mr. CURTIS. About every kind that is or has been made in the United States.

Mr. MARTIN. Do you have Schenectady engines, Baldwin engines, and so on?

Mr. CURTIS. I think we have them all.

Mr. MARTIN. When you contract with them for locomotives, do you contract for their construction without water glasses?

Mr. CURTIS. Always.

Mr. MARTIN. If you did not contract for their construction without water glasses they would contain them, would they not?

Mr. CURTIS. They might and they might not. We purchased six not long ago that had them on, and they were immediately removed as soon as they arrived at the road.

Mr. MARTIN. Just one more question: If the water glass was free at both ends—that is, if the connection between the glass and the boiler was perfect—the glass would indicate the water level in the boiler, would it not?

Mr. CURTIS. If there was an opening, so that the pressure could equalize itself.

Mr. MARTIN. Yes, sir. Does not the motion of the water in the glass indicate whether or not there is a connection between the glass and the boiler? What I mean by that is this: Is it not a fact that when a water glass is stopped up, the water stands stationary in the

glass, whereas if there is a free connection between the glass and the boiler there is a certain play or motion in the water that indicates to the experienced eye that it is reliably registering the water level in the boiler?

Mr. CURTIS. No. In an engine that is standing still the water will stand still in the glass, whether it is at that height in the boiler or not, if there is no connection.

Mr. MARTIN. Is it not a fact that the water never does stand perfectly dead in a water glass, whether the engine is working or not? Is it not a fact that there is always a life or motion in the water in the glass, regardless of whether the engine is in operation or not?

Mr. CURTIS. It would be practically imperceptible if the engine were standing still, unless they were raising steam or something on that order.

The CHAIRMAN. You may proceed.

Mr. CURTIS. Section 1, page 2, lines 7 to 10, provide:

That such boiler shall withstand a hydrostatic test in the ratio of one hundred and fifty pounds to the square inch to one hundred pounds to the square inch of the working steam power allowed.

By a careful investigation among the railroads in regard to the hydrostatic test it has been found that from 125 to 100 pounds to the square inch of the working steam power allowed is sufficient, and the investigation develops the fact that an increase in this pressure would be unwise.

The hydrostatic test does not in any way determine the safe working pressure of the boiler. It is used principally for determining the location of places in boilers that are subject to leaks, in order that they may be repaired. A very severe and unwise hydrostatic test might impair the boiler and start fractures that would later lead to serious results.

I shall be glad to answer any questions you wish to ask on that matter.

Mr. ESCH. Have you the statistics as to the number of casualties on railroads resulting from boiler explosions?

Mr. CURTIS. Not all railroads.

Mr. ESCH. To what extent have you those statistics? If you have not them, if some other witness here has them I should like to have them put into the record, to show the necessity for this legislation.

Mr. CURTIS. Will you please state your question again?

Mr. ESCH. Have you any statistics showing the number of casualties on railroads in the United States resulting from boiler explosions?

Mr. CURTIS. I have statistics from some railroads.

Mr. ESCH. I should like to have you insert them in the record, then, if you have them.

Mr. CURTIS. Very well; I will file those statistics.

Mr. CALDER. How many accidents in which lives were lost have you had on your line as a result of boiler explosions in the past five years?

Mr. CURTIS. We have had one such accident.

Mr. STAFFORD. In what period?

Mr. BARTLETT. In five years, he said.

Mr. CURTIS. In five years. This accident was caused by a flue "pulling through the sheet," as it is called. In repairing boilers it is

necessary at times to enlarge one of the flue holes in the front flue sheet. This hole was enlarged (which is a common practice); and in repairing the boiler they put a ferrule on the front end of the flue. The boiler had been in service for about six months; and for some reason the flue became loose in the back sheet and passed forward, opening a hole about 2 inches in diameter, and resulted in the killing of the engineer by scalding. That is the only case we have had; and that boiler was inspected not more than eight hours before the accident happened. It was one of those latent defects that could not be seen.

Mr. STAFFORD. Can you explain in a brief way how this hydrostatic test is not in all cases an accurate test to determine the safety of boilers?

Mr. CURTIS. The hydrostatic test consists in filling the boiler full of water and increasing the pressure to the prescribed amount—usually from 10 to 25 per cent in excess of the working pressure. Water is much more searching for leaks than steam; and if there is any place that is liable to leak, water will show a seep. We know then that there is liability of a leak, and it can easily be repaired. It is a strain upon the boiler; and I can not see where it in any way determines or tells us or shows us where the boiler is weak.

Mr. STAFFORD. Is there any other method in use to determine the safety of boilers?

Mr. CURTIS. Only careful inspection by competent men that are familiar with the boiler and the class of inspection which they make.

Mr. ESCH. How often do you inspect the boilers on your road?

Mr. CURTIS. The boilers receive a general inspection and a hydrostatic test each time they are taken into the shop for general repairs. This runs from seven to twelve months. They are inspected every day, at the end of every trip, by the terminal men, to see if anything appears on the outside that is wrong, or leaking, or anything of that kind. They also receive, periodically (ranging from two weeks to thirty or forty days), an inspection of the stay bolts. This inspection depends upon the locality in which the boiler is running and the pressure upon the boiler.

Mr. ESCH. When you make this exact hydrostatic test (which is once every seven or twelve months, as you say), do you take off the outer casing of the boiler?

Mr. CURTIS. For the hydrostatic test the boiler has to be fully inclosed. Do you refer to taking off what is called the lagging or the covering?

Mr. ESCH. Yes, sir; the lagging.

Mr. CURTIS. That is all taken off.

Mr. ESCH. It all has to be removed?

Mr. CURTIS. Yes, sir; we strip it, so that you can see every portion of the boiler.

Mr. FAULKNER. How long is an engine out of service for an inspection?

Mr. CURTIS. A thorough hydrostatic test, and opening the boiler for inspection at the test, will take anywhere from three to ten days. It depends upon the extent of the test.

Mr. CALDER. Do any of the States through which your system operates require inspection of boilers by state inspectors?

Mr. CURTIS. Do you mean to limit the question to locomotive boilers?

Mr. CALDER. Yes, sir.

Mr. CURTIS. I do not know of any.

Mr. CALDER. You do not know whether the States require inspection of the boilers?

Mr. CURTIS. I do not know of any States through which the Louisville and Nashville Railroad runs that require inspection of locomotive boilers.

Mr. CALDER. Do you have to report to the railroad commission of any State the condition of your boilers at any period of the year?

Mr. CURTIS. No.

Section 1, page 2, lines 10 to 15, provide:

That such boiler and appurtenances are well made, of good and suitable material; that the openings for the passage of water and steam, respectively, and all pipes and tubes exposed to heat are of proper dimensions and free from obstructions; that the spaces between and around the flues are sufficient.

In this respect the bill prescribes something very indefinite. It does not state what is good and suitable material, or what are the proper dimensions for openings for the passage of water and steam, and proper dimensions for pipes and tubes exposed to heat; nor does it state what is sufficient spacing between and around the flues.

Different men may honestly have different opinions as to what is good and suitable material, proper dimensions, and sufficient spacing. These differences in opinion may vary greatly. If it were left to the inspectors, they might disagree among themselves. But as these inspectors are to be invested with all authority, they could work great hardships upon the railroads, as the railroads have no right to their opinion in the matter. The inspectors are not held responsible by this bill; therefore their decisions are without penalty to them. They suffer no loss; but an unwise decision or opinion on the part of an inspector might work a great and unnecessary hardship upon the party operating the boiler.

Are there any questions on that subject?

The CHAIRMAN. You had better go ahead with your statement.

Mr. ADAMSON. When an engine appears to be working satisfactorily, and the boiler seems to be doing good work, it would seem like very poor policy, and uncalled for, to take it off and send it into the shop in order to be inspected. Is it not?

Mr. CURTIS. No, sir.

Mr. ADAMSON. Tampering with it unnecessarily might get it out of order.

Mr. CURTIS. We do not tamper with them; we fix them. We know by the district in which it is in service how long a boiler should run. A record is kept of them; and if a boiler inspection is due after thirty days, at the end of that period of thirty days the boiler is taken in and inspected.

Mr. ADAMSON. Whether there is any indication of anything wrong, or any weakening of it, or not?

Mr. CURTIS. We do not wait for any indication of trouble. The time is up, and it must be inspected. We are looking for trouble, without having it come to us.

Mr. BARTLETT. You are taking precautions?

Mr. CURTIS. Yes, sir;

Section 1, page 2, lines 15 to 23, provide—

That the boiler, flues, safety valves, fusible plugs, low-water indicators, feed-water apparatus, gauge cocks, steam gauge, water and steam pipes, low-water gauges, means for moving mud and sediment from boiler, and all other machinery and appurtenances thereof are of such construction, shape, condition, arrangement and material that the same may be safely employed in the active service of such carrier in moving such traffic without peril to life or limb.

This clause is very indefinite, though some parts are understood—such as the boiler, flues, safety valves, fusible plugs, feed-water apparatus, gauge cocks, steam guage, water and steam pipes. But it is very indefinite as to what is meant by low-water indicators; and it is not clear as to what is meant by means for removing mud and sediment from the boiler.

If low-water indicators pertain to any automatic device, either to maintain the water supply or to act as an alarm when the proper supply of water is not provided, this is the introduction of a new device into the operation of locomotive boilers. It is well known that such a device as is used in stationary practice would be unreliable and not applicable to use on locomotive boilers.

Are there any questions on that?

The CHAIRMAN. You had better proceed. The committee will ask you questions that are irrelevant as long as you are stopped. Get through with your statement, and then you will get the questions altogether, properly.

Mr. CURTIS. Yes, sir. In regard to the means for removing mud and sediment from the boiler, if this pertains to the blow-off valve, it should be so stated, although the blow-off valve is not the means. This clause is so vaguely drawn that it could be construed to mean the source of supply from which the water comes to wash the boiler, such as the pumping station or the city water supply.

Relative to the fusible plug: In the early days of American railroading, the fusible plug was used in low-pressure locomotive boilers, but the use of this device is now obsolete on most all the railroads, as it is considered impracticable and inefficient and an element of danger rather than one of safety.

In reviewing the whole of section 1 it will be noted that everything in direct relation to the boiler and its appurtenances, excepting the hydrostatic test, is very vague and incomprehensive and leaves these matters to the opinion of the inspector, the owners of the locomotive boilers having no voice whatever in the matter. It would be very unfair to the owners of locomotive boilers and to the men in charge of the same that their years of experience and honest endeavor to produce the very best construction, material, and workmanship would not entitle them to a voice in the matter of interpretation of the law.

It is within reason to assume that incorrect interpretations would be placed upon this section by the many inspectors that would be necessary to carry out this work and that, through these incorrect interpretations, the railroad companies would be put to an unnecessary delay and expense in the moving of traffic, which, during the periods of congestion, would operate directly on the public.

That hereafter it shall be unlawful for any such carrier to purchase any locomotive boiler to be used on any such locomotive in moving such traffic without having notified the seller of such boiler that it is to be so used; and it shall be unlawful for the seller of such boiler, after having been so notified, to sell such boiler to such carrier without

each plate thereof is distinctly and permanently stamped by the manufacturer, and, if practicable, in such place that the marks shall be left visible, with the name of the manufacturer of such plate, the place where manufactured, and the number of pounds of tensile strain it will bear to the sectional square inch; and on and after January first, nineteen hundred and ten, it shall be unlawful for any such common carrier to use on any such locomotive used in moving such traffic any boiler hereafter manufactured without each plate thereof is stamped in accordance with the provisions of this section.

The marking of a sheet is of practically no value, for the reason that the process of manufacture of the boiler, which requires bending and forming of the plates, would be very liable to deface or obliterate the ordinary marking, in addition to which the necessary heating, flanging, and bending of the plates would modify the original properties. It is the universal practice of the builders of locomotive boilers to keep a record of all sheets used in the construction of locomotive boilers, which includes the manufacturer's name, tensile strength, elongation, and usually the chemical composition, and this information is obtainable upon request.

Section 3, page 3, lines 16-20:

That the Secretary of Commerce and Labor shall, in such manner and under such rules as may be prescribed by him, once in every three months at least, cause a careful inspection of each boiler and the appurtenances thereof of such locomotive used in moving such traffic.

A general inspection is unnecessary every three months, and local conditions make it necessary to make partial inspections at more frequent intervals. The frequency of the inspections should be fixed by the railroads, which are most vitally interested in the safety of the boilers. No general period can be set that will be reasonably applicable all over the country.

There is nothing provided in the bill to indicate where the inspection shall be made, nor does it require that the inspector shall be on hand to promptly inspect and be diligent in the performance of his duties and that he shall not cause any unnecessary delay to the prompt repairing of the boiler.

Mr. ESCH. That provision requires the general inspection, does it not, every three months?

Mr. CURTIS. Yes, sir.

Mr. ESCH. Can one man do that inspection work?

Mr. CURTIS. On a limited number of engines.

Mr. ESCH. One man can do the inspection work?

Mr. BARTLETT. He says on a limited number of engines.

Mr. CURTIS. Yes; on a limited number of engines.

Mr. ESCH. Yes, I know; but could he also apply the hydrostatic test alone?

Mr. CURTIS. No; he would be assisted in doing that.

Mr. ESCH. How long would it take him to make such general inspection of a boiler?

Mr. CURTIS. From three to ten days, depending on how much he wished to inspect.

Mr. ESCH. There are 60,000 locomotive boilers in the United States?

Mr. CURTIS. Yes, sir; approximately.

Mr. ESCH. One-fourth of that number would be 15,000 that would have to be inspected every three months. I was trying to get at the cost to the Government.

Mr. CURTIS. I was just coming to that.

Mr. ESCH. All right; if you are going to cover that, go ahead with your statement.

Mr. CURTIS. I figure it this way: Sixty thousand locomotives at four inspections per annum would be 240,000 inspections. After careful consideration it is thought that one man can possibly inspect 50 locomotives per year—that is, care for them—but they would have to be near together in order for him to do it. On this basis it would require 1,200 inspectors for the United States. Assuming that these inspectors will be paid \$1,500 per annum—and I think that is a reasonable salary—the total pay roll to the Government would be for these inspectors \$2,250,000. It is reasonable to assume that these inspectors' expenses will be equal to their salaries, and that would make another \$2,250,000 expense for the Government to bear, making a total of \$4,500,000 pay roll and expense to the Government. To this cost must also be added the cost of additional locomotives. These inspections take more time when conducted by the government inspector than the inspections by the railroad companies, in many instances, and after a careful consideration it is estimated that it will require 10 per cent more locomotives to do the same traffic work than the number now used.

The CHAIRMAN. You stated several times that it would take from three to ten days to inspect a locomotive. That is a wide latitude of time. How long does it take, and why is the difference?

Mr. CURTIS. That is for a general inspection.

The CHAIRMAN. I understand that.

Mr. CURTIS. A general inspection requires the taking apart of part of the boiler; a general inspection consists of going into the interior of the boiler.

The CHAIRMAN. I understand all that; but why do you say from three to ten days?

Mr. CURTIS. If you take out the flues and examine the inside, it would take ten days. If the inspector is willing to let it go without taking the flues out or the steam pipes of the boiler, it would perhaps require only three days.

Mr. HUBBARD. You mean a complete inspection would take ten days, and an incomplete inspection would require three days?

Mr. CURTIS. From three to ten days.

Mr. HUBBARD. You mean in three days he could make a complete inspection?

Mr. CURTIS. If he did not require the flues to be taken out, and so forth.

Mr. HUBBARD. Well, is that necessary to a complete inspection?

Mr. CURTIS. I would say it was necessary. The Louisville and Nashville Railroad—

Mr. HUBBARD. Then comes the question of the chairman: Why is it that that complete inspection in some cases requires ten days and an equally complete inspection in other cases only three days?

Mr. CURTIS. Some shops have greater facilities than others and the engines are very different in size. If an engine is very large and the facilities very small, and the inspector requires complete inspection of all details, it will consume ten days.

The CHAIRMAN. How long did it take you to make complete inspections on your road?

Mr. CURTIS. Our complete inspections are made when the locomotive goes in the shop, and the locomotive is in the shop from six to thirty days, and the inspection is made at the time the repairs are made.

The CHAIRMAN. How often did you say the inspections are made? Are they made at fairly regular intervals?

Mr. CURTIS. Every six and twelve months; whatever the shopping period of an engine may be. Partial inspections are made oftener.

The CHAIRMAN. Is the locomotive sent to the shop for repairs regardless of whether it needs repairs?

Mr. CURTIS. The engines wear out, as a rule, after having gone so many thousand miles apiece.

The CHAIRMAN. Do you have a fixed time for making this general inspection?

Mr. CURTIS. It is determined by the mileage of the locomotive; that is, if an engine is used night and day for six months it will be worn out in six months, and if it is only used in the daytime it may go for twelve months without needing a general inspection.

The CHAIRMAN. What is the mileage?

Mr. CURTIS. It ranges from 40,000 miles to 120,000 miles.

The CHAIRMAN. Well, that is another very wide range. You don't seem to give us very much information. What is the difference between the 40,000 and the 120,000?

Mr. CURTIS. The engine making 40,000 miles is a heavy freight locomotive doing a great deal of hard work and pulling all it can lug over the hills, up and down. Its service is very hard and it uses a great deal of water and coal and it does a great deal of work in that time. A passenger locomotive may have an easy time, running on light trains, and its periods of inspection will be further apart.

The CHAIRMAN. You take the freight locomotive; does that go into the shop for repairs on the basis of a fixed period of time or a fixed mileage?

Mr. CURTIS. For general repairs, on the mileage basis, generally.

The CHAIRMAN. Is that a rule of the company?

Mr. CURTIS. Yes; on the mileage basis.

The CHAIRMAN. It goes in when it has run so many miles?

Mr. CURTIS. There is the monthly inspection—

The CHAIRMAN. But I would like to get information about the general inspection.

Mr. CURTIS. The general inspection is made at the time the engine is worn down to the condition where it needs repairs.

The CHAIRMAN. And is that based on mileage or fixed time or upon the judgment of some man that the engine needs repairs?

Mr. CURTIS. It is based upon the mileage to a large extent, and on the basis of the period of its shopping to another extent. We can not always tell how long an engine will stay out. If an engine is out four months and comes into the shop it receives inspection.

Mr. ESCH. But every engine has got to go in for that inspection at least once in twelve months?

Mr. CURTIS. Not every engine. Most engines go in oftener than that, and some engines have such light service that they do not need inspection as often as that. Some engines, for instance, haul noth-

ing but pay cars or officers' cars, and their work may be only three or four days a month. It may be they only haul one car. The deterioration of the boiler depends largely upon the amount of work required, and not on the time.

The CHAIRMAN. That is what we are trying to ascertain, whether you have any fixed rule, including the judgment of some one as to the shape the engine is in.

Mr. CURTIS. The condition of the engine regulates that largely. The engine will come in for repairs—these heavy locomotives—as I say, sometimes in six months, and that regulates that part of the inspection.

The CHAIRMAN. Well, does it go in for repairs unless some one thinks it needs repairing?

Mr. CURTIS. Why, certainly; some one would have to think it needed repairs, because you can see the need of it. An engine receives a daily inspection, and you can see—

The CHAIRMAN. But you can not tell by looking at the engine as to whether the boiler needs repairs inside?

Mr. CURTIS. Yes, sir.

The CHAIRMAN. It is a wonder that you give any general inspection; I should think you would just look at it.

Mr. CURTIS. We take it apart to be sure of it.

Mr. HUBBARD. Then, if your freight engine in hard service accomplishes its 40,000 miles, it still does not go in for inspection unless there is some indication to the eye of somebody that it ought to have that inspection; is that true?

Mr. CURTIS. Yes, sir; but I wish to state that this engine is receiving its monthly inspection and daily inspection besides.

The CHAIRMAN. The mileage, then, does not govern, as I understand you now?

Mr. CURTIS. The mileage largely governs.

The CHAIRMAN. But the mileage of itself is not enough to require the inspection, is it? On top of that there must be some appearance to the eye of somebody that that inspection is needed, as I understand you now. Is that correct?

Mr. CURTIS. No; if an engine looks to be in the finest condition at the time it needs repairs to its machinery and flues it receives a thorough inspection.

The CHAIRMAN. Will you repeat that?

Mr. CURTIS. I will state a little further for your information that the flues are generally the weak part of a locomotive—the boiler—and they show the first indication of weakness, of wear, when the locomotive needs repairs. The ends need to be renewed, and these flues cause the engine to come to the shop on merely a mileage basis, according to the condition of the water, where it runs; and it is this taking the engine in for the weak parts at that time they are given their general inspection.

The CHAIRMAN. Do you pay any attention to the fact that the 40,000 miles' run is completed in the absence of any indication of weakness in the flues?

Mr. CURTIS. No.

The CHAIRMAN. You can not see the flues?

Mr. CURTIS. You can see the ends of them.

The CHAIRMAN. But you can not tell whether there is any weakness that way. That is the purpose of the thorough inspection, and the inspection is no good unless it discovers whether the flues are weak or not?

Mr. CURTIS. The inspection of flues can not be made unless they are taken out of the boiler, and that will take the ten days' period of inspection.

The CHAIRMAN. Well, proceed.

Mr. CURTIS. In reference to this matter of cost, it would take at least 10 per cent more locomotives, which would require 6,000 locomotives in the United States. Placing them at a very conservative price of \$12,000 each, that would make \$72,000,000 additional equipment.

Mr. HUBBARD. Is that based simply on the longer time the government inspector would take than the railroad inspector, or does it also take into account the more numerous inspection?

Mr. CURTIS. It takes into account four general inspections per annum instead of about one, or somewhere in that neighborhood.

The CHAIRMAN. Have you made that computation on the basis of one inspection by the railroads per year for each locomotive?

Mr. CURTIS. You mean to take the one inspection off?

The CHAIRMAN. I want to know upon what basis you have made the computation. You have made it on the basis of four government inspections?

Mr. CURTIS. Yes, and cost to the Government; we will have to make our own inspections anyhow.

Mr. HUBBARD. But you have made it on the basis of four annual inspections compared with what, with how many inspections now?

The CHAIRMAN. Yes, on the basis of how many inspections now? You are saying it will take 10 per cent more.

Mr. CURTIS. Ten per cent more locomotives on account of these four inspections instead of one.

The CHAIRMAN. Instead of one a year. And you compute that you now only make one?

Mr. CURTIS. Only one general inspection per year.

The CHAIRMAN. Proceed.

Mr. CURTIS. I would like to ask Mr. Crawford if he will take this matter up.

Mr. SIMS. I would like to ask you a question, and that is if the inspection done by the railroads could be done more economically by the fact that they inspect at a time when the engines would not otherwise be needed on the road, whereas the government inspection would order the locomotive inspected regardless of the fact whether the engine would be idle?

Mr. CURTIS. Yes. And there is another thing to be considered, and that is that there are many places on the lines that they use only a few locomotives, and it is not necessary to maintain a large corps of machinists and boiler makers to care for two or three engines, or even one engine. On those lines that have so little travel the engine is mostly used in the daytime and it lays up at nights, and there are many places where there is one man, the boiler maker, who does the inspection of boiler work and looks after the boiler in all its ways. And this engine works six and seven days per week

until it goes in for its general inspection or the monthly inspection. If it can not be made by him at night it may go to some larger terminal.

That is the case where there are only a few engines used, and that is the case where this government inspector would work a hardship unless he would accustom himself to work nights, and when the engine was in, and then he would not have the number of men on hand to make this inspection that is prescribed in this bill.

The CHAIRMAN. Working nights would not help any in making a general inspection, would it?

Mr. CURTIS. Yes, certainly; an hour is an hour wherever it may be.

The CHAIRMAN. You would not expect the government inspector to take out the flues?

Mr. CURTIS. No; but we would expect the government inspector to make the inspection. He must be the man that must make this inspection and swear to it, as I understand it. He can not stand around there and look on and have somebody else say, "That boiler is all right." That would not do for a minute. I would say to him, "You go in and make the inspection yourself." And I would say, "I want to see your certificate."

Mr. RICHARDSON. Can you give any estimate of the number of boiler explosions that have taken place in the past on the different roads?

Mr. CURTIS. I could tell you of a few. I have not reliable information that would go into this thing thoroughly. I endeavored to get that information, but there is a wide difference of opinion as to what is a boiler explosion.

Mr. RICHARDSON. Then you can not make an estimate upon all the roads in the country as to the extent of the accidents which this bill aims to correct?

Mr. CURTIS. No, sir.

Mr. RICHARDSON. Do you not know a great many of those explosions are due to the negligence of the employees?

Mr. CURTIS. Yes, sir.

Mr. RICHARDSON. And this bill would not correct those at all?

Mr. CURTIS. The larger portion of them is due to failure of mankind and lack of thought. It is not his desire not to take care of the boiler, because many times he is the loser. He may lose his life.

Mr. RICHARDSON. Do you not think you would be able when this hearing closes to furnish an estimate of the number of explosions that have taken place, say, in the last twelve months?

Mr. NEIL. I have some data right here.

The CHAIRMAN. He has agreed to put in such data as he has.

Mr. CURTIS. I can furnish you such explosions as resulted in the tearing of the shell or of the fire box, and that data I believe to be reasonably correct. That is since January 1, 1905.

The CHAIRMAN. Why do you say that if the Government made this inspection you would still continue to make a railroad inspection?

Mr. CURTIS. I would not trust any inspector until I knew him to be competent, and it is my opinion that the Government could not select 1,200 inspectors, or half that number, from the boiler makers of the United States that would be competent to make a thorough inspection.

The CHAIRMAN. You think the men who now make the inspection would not be ready to work for the Government?

Mr. CURTIS. Yes; but there are several of them. There is one man that makes one kind of an inspection and another that makes another kind of an inspection. There are several different classes of men that make the boiler inspections.

Mr. RICHARDSON. Do you not believe also that if the Government was charged with such a responsibility as that, with appointing a great number of boiler inspectors, that it sooner or later would be governed by political considerations in the matter of the appointment?

Mr. CURTIS. That is my opinion.

Mr. ADAMSON. If you want your boilers inspected by government inspectors you must stop your trains and bring them up and present them during the hours between 8 o'clock in the morning and 4.30 o'clock in the afternoon, in order to conform to the eight-hour law.

The CHAIRMAN. I suppose what the gentleman is referring to could be the case under Democratic administration, and God forbid that that come.

Mr. RICHARDSON. Do you refer to what we know has taken place when the Government has taken charge of such things?

Mr. CURTIS. It is my personal opinion that this bill would not accomplish the results that are intended. I think another bill could be drawn up, by the assistance of some of those who understand the matter thoroughly, that would be acceptable to the railroads.

The CHAIRMAN. Now, give us information on that subject. We are not bound by the form of the bill.

Mr. CURTIS. I say this for myself, not for anyone else.

The CHAIRMAN. Well, that is all you can speak for—yourself. Is the present system of railroad inspection of boilers as safe as it ought to be, throughout the country?

Mr. CURTIS. It is my opinion that the present system of railroad inspection of boilers is the very best. It has been perfected from time to time, from experience, and on account of increased demand for higher power boilers, and I do not believe it can be improved upon.

The CHAIRMAN. Is it not the fact that upon all the railroads, including possibly your own, when there is a tremendous strain upon the equipment and a shortage of locomotives it is a quite frequent practice to send out a locomotive on a run when it has been ordered sent into the shop?

Mr. CURTIS. Not on our line. If an engine is ordered sent into the shop, it goes into the shop. If it is unsafe, it shall not run.

The CHAIRMAN. No; that has been ordered sent into the shop—I did not say sent into the shop.

Mr. CURTIS. That has been ordered sent in. That is sufficient for the Louisville and Nashville Railroad. If anyone runs it after that time, so far as I am concerned, I would stop his pay.

The CHAIRMAN. We have heard it stated here about how long men worked, and have heard the statement made that if a man worked after a certain time he would be discharged. But we discovered after a little investigation that that was only figuratively speaking; that nobody was really discharged.

Mr. CURTIS. I don't know about that, but on our line we do not allow dangerous engines to be run.

The CHAIRMAN. If the operating department is exceedingly anxious to send out a train and only has available an engine which may have been ordered to the shop, don't you sometimes take chances?

Mr. CURTIS. No, sir.

The CHAIRMAN. Doesn't the transportation department take chances in such a case?

Mr. CURTIS. The Louisville and Nashville Railroad would not. It can not go over the superintendent of machinery when he says no on the question of repairs.

The CHAIRMAN. Well, does the superintendent of machinery sometimes yield a little bit, when it means a good many dollars to the road to be able to send out a train and only such an engine as I have described is available?

Mr. CURTIS. No, sir.

The CHAIRMAN. Then I congratulate the Louisville and Nashville Railroad.

Mr. CURTIS. I feel the duty imposed upon me to look after the power, and when I know an engine to be unsafe or think it to be unsafe, that settles it.

The CHAIRMAN. But here is a locomotive that has been running a number of miles, that you say you would ordinarily send to the shop; but it appears to be in safe condition and the railroad needs the use of the locomotive, needs it to take out a train, and it means dollars to the company whether it can use that locomotive or not. What happens in such a case as that?

Mr. CURTIS. If the examination shows it to be unsafe it goes to the shop.

The CHAIRMAN. But there is no chance for an examination, on your own statement. Which will happen in such a case, will it be examined or sent out?

Mr. CURTIS. The inspection determines that. An engine is stopped for inspection, the periodical inspection, regardless of the traffic.

The CHAIRMAN. How much of an inspection is that thirty days' inspection; how long does it take?

Mr. CURTIS. Anywhere from three hours to a day, depending upon the condition of the engine, what is found after inspection.

The CHAIRMAN. Just looking over the engine by a good mechanic?

Mr. CURTIS. By men that understand the inspection of boilers, by tapping of the stay bolts, determining whether they are broken, by a visible inspection of all parts possible.

The CHAIRMAN. Now, does it sometimes happen that when an engine is inspected and the boiler is given a thorough inspection, that you would find some defect there that would not be detected in the thirty-day inspections?

Mr. CURTIS. It is possible.

The CHAIRMAN. It is quite frequent, is it not?

Mr. CURTIS. I think not. I would like to have that question repeated.

The stenographer repeated the question, as follows:

Now, does it sometimes happen that when an engine is inspected and the boiler is given a thorough inspection, that you find some defect there that would not be detected in the thirty-day inspections?

Mr. CURTIS. No.

Mr. ADAMSON. You are confident, then, in your judgment that you would feel safer for your own road with your own inspectors, than inspectors appointed by the Government?

Mr. CURTIS. Yes; taking the inspection of the Government by several men.

Mr. ADAMSON. Well, generally speaking.

Mr. CURTIS. Yes; generally speaking, we would depend upon our own inspection.

Mr. SIMS. If the Government did the inspecting and charged no fee it would be an economy to the road to have them do it?

Mr. CURTIS. No; we would have to do our own inspecting.

Mr. SIMS. It would be entirely surplus, so far as you are concerned?

Mr. CURTIS. Yes, sir.

The CHAIRMAN. You are very confident that the roads would continue taking a locomotive out of use once a year for ten days to inspect it, although the Government has already four times during the year done the same thing?

Mr. CURTIS. If the government inspector was there we would inspect at the time he did. We would make a separate inspection from his; we would follow him around.

Mr. ESCH. In case of a damage suit because of a boiler explosion, would not the company be inclined to fall back on the government inspection for protection?

Mr. CURTIS. I could not tell you what the lawyers would do in that case.

The CHAIRMAN. Anybody can tell you what they would do, they would try it.

Mr. ADAMSON. Don't you think that if the Government gets to meddling too far in prescribing and enforcing these rules and regulations that it ought to be held responsible for some of the mistakes that are made?

Mr. CURTIS. I have never had any luck holding the Government responsible for anything.

Mr. ADAMSON. If it takes charge of your business to a great extent it ought to be held responsible.

The CHAIRMAN. We will take a recess until 10 o'clock to-morrow morning.

(Thereupon, at 4.35 o'clock p. m., the committee took a recess until to-morrow, Saturday, January 29, 1910, at 10 o'clock a. m.)





HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
OF THE HOUSE OF REPRESENTATIVES

ON BILLS AFFECTING

INTERSTATE COMMERCE

PART V

WASHINGTON
GOVERNMENT PRINTING OFFICE
1910

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES.

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BILLS AFFECTING INTERSTATE COMMERCE.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Saturday, January 29, 1910.

The committee met at 10 o'clock a. m., Hon. James R. Mann in the chair.

The committee thereupon proceeded to the consideration of the bill (H. R. 16883) "Relating to transportation of explosives and other dangerous articles, and to amend section 233 of the Penal Code."

STATEMENT OF MR. B. W. DUNN, CHIEF INSPECTOR OF THE BUREAU OF EXPLOSIVES, AMERICAN RAILWAY ASSOCIATION.

The CHAIRMAN. Please state your name.

Mr. DUNN. B. W. Dunn.

The CHAIRMAN. And whom do you represent?

Mr. DUNN. I am chief inspector of the bureau of explosives of the American Railway Association.

The CHAIRMAN. You wish to be heard on the explosives bill?

Mr. DUNN. Yes, sir.

The CHAIRMAN. What is the number of the bill?

Mr. DUNN. No. 16883.

The CHAIRMAN. You may proceed.

Mr. DUNN. This bill, Mr. Chairman, proposes legislation which, if passed, will require the shippers of explosives and other dangerous articles and the common carriers of those articles to expend time and money in order to comply with the provisions of the bill.

The CHAIRMAN. You speak of "explosives." That matter is covered by the existing law, is it not?

Mr. DUNN. Yes, sir. The point I want to make is that both parties who are affected by this bill, and are, as far as I know, approving it, have nothing to gain except the chance to perform a public duty, and to see that everybody else performs the same duty.

I thought that just a few minutes' explanation might be useful to your committee, to show how this movement originated, in order that you might understand the necessity for the proposed legislation.

Congress, as you know, did not take any action in the way of passing legislation in connection with the transportation of dangerous articles from 1866 until this bill for explosives was passed in 1908. That bill in 1908 was introduced on the request of the transportation interests, and they were led to suggest its introduction on account of their experience in handling dangerous articles on the railroads of the United States.

Thirty or forty years ago explosives were not necessary to anybody. The military man had to have them, but outside of the gentlemen in that occupation it was not appreciated that anyone had to have explosives.

The CHAIRMAN. I do not wish to interrupt the trend of your remarks, but of course the law already covers explosives. We heard very fully on the subject of explosives before we reported the bill which has become a law.

Mr. DUNN. Yes.

The CHAIRMAN. And the change that is proposed here is as to other dangerous articles?

Mr. DUNN. I am coming to that in two or three sentences, Mr. Chairman. I wish to say that this explosives problem has grown upon the country very gradually, and it was suddenly realized a very few years ago that the country is full of explosives that are essential to the business interests of the country; and this law of 1908 gave the Interstate Commerce Commission authority to regulate that transportation. One of the principal features of the regulation of the Interstate Commerce Commission on that subject was that articles in interstate commerce that are liable to cause fires in transit must be kept away from explosives, because the explosives must be protected from fire. Paragraph 1682 of the regulations of the Interstate Commerce Commission, based on the law of 1908, tell the common carrier to separate these articles which are liable to cause fire and to keep them away from explosives.

To carry out that law for the protection of explosives, it became necessary to have regulations for other dangerous articles. The bill that was originally suggested here included the words "explosives and other dangerous articles." For some reason unknown to us the words "other dangerous articles" were stricken out of the law of 1908.

The CHAIRMAN. Were they ever inserted?

Mr. DUNN. They were inserted in the draft that was brought here by the railroad interests. They were taken out in committee, I suppose.

Mr. ESCH. That act says that it shall be unlawful to transport any dynamite, gunpowder, or other explosives.

Mr. DUNN. I am speaking of section 233, now. It was old section 2. You notice in that section the authority of the commission is limited to explosives, and the bill proposed was for the purpose of regulating the handling and transportation of explosives and other dangerous articles.

The CHAIRMAN. We had that bill before us for several sessions of Congress before it became a law. There never was any suggestion in the committee, so far as I recall, in reference to any dangerous article except explosives.

Mr. DUNN. I presume that the hearings were limited to explosives, possibly, because the bill when it was introduced into the House omitted the words "other dangerous articles." I do not know why that was done. I do not know what reason could have prevented the hearings extending to these other dangerous articles.

The CHAIRMAN. There was no reason why there should not have been a hearing on them, if anybody had wanted it. We did not restrict it. At any rate, the matter is now before us.

Mr. DUNN. Yes, the matter is now before you, and I simply want to make the point that the railway interests tried to get it before the committee on the first draft of the bill that was passed.

The CHAIRMAN. I think you are entirely mistaken about that.

Mr. DUNN. I only know that I wrote the draft of the bill that was brought down here, and it was in that draft. I do not know where it was cut out.

Assuming that it is necessary, on account of this rule of the Interstate Commerce Commission, which now has the force of federal law, to regulate the transportation of these other dangerous articles (and I think anyone will admit the advisability of regulating them), the question simply is, How is it best to regulate them? The American Railway Association has formulated and prescribed regulations for their transportation. These regulations were put into effect first in 1908, at the same time that the Interstate Commerce Commission rules for explosives were put into effect. They have been worked up by experience since that time, and they are now in very good practical shape. Those regulations prescribe that the duty to the public must be divided into two parts; that the shipper must do his part as well as the common carrier. It is almost self-evident that the common carrier can be as careful as you please in handling a dangerous article, but if the shipper has not properly prepared it, if a container comes to the common carrier in a leaking condition, and it contains a dangerous material, he can only slightly modify the danger by careful handling in transit. If the shipper chooses for any reason not to obey a reasonable rule for this purpose, under the present conditions all the railway can do is to say to the shipper: "We will not receive your freight for transportation."

I am concerned only with the enforcement of these regulations and in trying to get the railway people as well as the shippers to comply with them. When I undertake to ask a railway to refuse to carry the product of a certain shipper, all sorts of complications arise at once. If there are several roads entering the town where the shipper does business, he immediately transfers his patronage, or threatens to do so, and one road says, "I can not do it unless the other road does." So it is necessary to get all the roads to agree to refuse to receive his freight. The most practical way for the shipper to do his duty, if proper, would be to have some one in proper authority prescribe what his duty is, and then we would have no trouble of that kind.

The CHAIRMAN. What are some of the dangerous articles that you refer to?

Mr. DUNN. They are divided into four classes. First come inflammable liquids, the most prominent of that class being gasoline, a liquid which, if allowed to leak out of its containers, will immediately fill the car with an inflammable mixture of vapor and air. When that occurs the conditions in the car are exactly the same as they would be in your cellar if you had a leak in a gas pipe, and you went down to look for it with a lighted match. A railroad man goes into a car with a lantern to look for freight, and an explosion, a fire, and the burning up of the car are the necessary and immediate consequences.

The CHAIRMAN. Has that ever happened?

Mr. DUNN. In August, 1907, a car came into the Kingston (West Shore) station from Massachusetts, loaded with what the bill showed

to be cement. A railroad man had a right to suppose that it was Portland, Atlas, or some other kind of harmless cement. In fact, it was what is known in the trade as rubber cement, a solution of rubber in about 80 per cent of gasoline. One barrel of that cement had broken in transit, and there was a dangerous mixture of vapor and air in the car. There was nothing on the car to indicate that there was any dangerous condition. The shipper gave no information when he turned it over to the railroad as to the qualities of the material. When a railroad employee went in at night with two truckmen, to transfer the freight, there was an immediate flash which blew them out of the car, fortunately without killing them; but the fire that resulted burned up the entire station, forty loaded cars, and \$140,000 worth of property. Within 8 miles of that station there is a dynamite factory that almost every night has one or more cars loaded with dynamite standing in the yard waiting for classification. By good fortune none of those cars were there that night. That is a good illustration of the necessity for having a regulation that such material shall be first prepared by good, safe packing; that it shall be properly labeled to show the railroad men that there is something that must be put by itself, and something put on the outside of the car, a placard that will prove a sentinel, telling railroad men, "Do not go into the car with a light until you have investigated and see whether the conditions are safe."

Another class of articles are those, not liquids, which are yet liable, when mixed with organic matter or when they come in contact with moisture, to start a fire.

Another class is that of strong acids, such as nitric acid, which, when it gets to a combustible material, starts a fire right away. You can not tell why the fires have started. The first indication of the car being on fire is the fire itself.

The fourth class is that of compressed gases, carbonic and others, which are shipped around the country in cylinders under high pressure, and which amount almost to explosive bombs. There was an explosion of one of these cylinders recently in the city of Portland which sent the head of the cylinder, weighing 25 or 50 pounds, diagonally over the block, and other pieces went through a plate-glass window.

These articles are included in this regulation.

The idea has been throughout to get a bureau which represents the railway interests into touch with the shippers themselves, to confer with them, and to ascertain what would be a reasonable rule from their standpoint. After those interests have come to an agreement, the idea is that we should get the Interstate Commerce Commission, as an impartial body, clothed with authority, to decide if the regulations are reasonable, and then to give them the force of federal law so that the railway interests can get the uniform enforcement of them.

Mr. STAFFORD. I assume that the railroads have conferred with the shippers as to how the dangerous articles should be shipped, and as to the character of the containers?

Mr. DUNN. Yes; we did that in preparing the regulations which are now in use by the railways, and for which we want federal support.

Mr. STAFFORD. Have the shippers in any instance objected to conforming to the suggestions made by the railroad companies as to the character of the containers?

Mr. DUNN. Not as a rule—not any of the large shippers, the manufacturing shippers—but we have had a number of objections from the second-hand men and jobbers, dealers who take a product and reship it. We have had several very pronounced cases. One gentleman in the State of Oklahoma said that he would not obey the rule. In order to make him do it it was necessary to get five railroads to agree to refuse to carry his product, which we could not do. He is to-day standing in open defiance, refusing to comply with a reasonable rule. There would not have been any opposition from him at the beginning if we could have pointed to the fact that this was a federal law.

The CHAIRMAN. The Interstate Commerce Commission in its recent annual report congratulates everybody, I believe, upon the passage of the explosives bill. What, in your opinion, has been the effect of that?

Mr. DUNN. I think, sir, that the best short statement of that is this: The bureau which, in the interest of the railways is trying to enforce these regulations, was organized in June, 1907. It did not, of course, become very effective in practical work that year, but in the year 1907 there were 100 people killed or seriously injured and burned from explosions, with a money loss of over half a million dollars.

In 1908, when the country had been districted, and the inspectors of the bureau were visiting all the shippers and railway stations, the number injured was reduced to twenty some odd, and the total money loss from explosions was reduced to about \$100,000.

In 1909 we did not have a single explosion up to about the middle of December, when there was one small explosion which occurred at Minneapolis, resulting in the death of two men and a loss of less than \$1,000 worth of property.

The CHAIRMAN. The term "dangerous articles" is rather broad.

Mr. DUNN. That brings me to the point where I have a suggestion to make as to a change in the wording of the bill. The first suggestion is that in line 8, page 1, after the word "formulate" shall be inserted the word "reasonable," the idea being to make it perfectly plain that any party can get a decision from the courts in case his interests are affected by the rules which the Interstate Commerce Commission shall prescribe under this law.

The CHAIRMAN. You think that would leave the courts to determine—

Mr. DUNN (interrupting). Whether the regulations of the Interstate Commerce Commission are reasonable or not.

The CHAIRMAN. I am not quite sure that the Interstate Commerce Commission would agree to that construction.

Mr. DUNN. I am willing to stand by that adjective as describing any rules that they agree to.

The CHAIRMAN. They claim that where we provide that a rate shall be reasonable, and they pass upon it, a court has no jurisdiction over the subject.

Mr. ADAMSON. What wording do you suggest?

Mr. DUNN. "Reasonable regulations." The second suggestion is that on page 2, line 8, after the word "transport," we shall insert the

words "on account of their liability to cause fires or explosions." The reason for that is this—

The CHAIRMAN. "On account of their liability to cause fire or explosions?"

Mr. ADAMSON. Fires or explosions.

The CHAIRMAN. Well, "fire" means the same as "fires." You say "on account of their liability to cause fires or explosions?"

Mr. DUNN. Yes; as it now stands it has been suggested that the Interstate Commerce Commission might decide that lumber is a dangerous article. It surely is inflammable, in the sense that it can be burned; and some drugs, if poisonous when taken in too great quantity, might become dangerous.

The CHAIRMAN. Is there any reason why it should not have authority to make reasonable regulations for the transportation of lumber?

Mr. DUNN. That we are not concerned with. We are trying to stop the fires and explosions. If anybody else desires, properly, to go farther, we have no objection.

The CHAIRMAN. Suppose we should provide as is provided in the so-called Mann bill, No. 16312:

And it is hereby made the duty of all common carriers, subject to the provisions of this act, to establish, observe, and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations, or practices are or may be made or prescribed, and just and reasonable regulations and practices affecting classifications, rates, or tariffs, the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, the carrying of personal, sample, and excess baggage, and all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property, subject to the provisions of this act, which may be necessary or convenient to secure the safe and prompt receipt, handling, transportation, and delivery of property, subject to the provisions of this act, upon just and reasonable terms.

That would cover all you want, would it not?

Mr. DUNN. It seems to me that that authority is sufficiently broad to cover almost anything; and I have, of course, nothing to offer in the way of criticism of that suggestion. Even if the commission had that very general authority I would like to see them restrict themselves in acting on these dangerous articles to a set of rules that would not be mixed up with the general set of rules.

The CHAIRMAN. Of course this would make it first the duty of the common carriers to establish such regulations and enforce them. It would give the commission power to make such regulations if the carriers did not make and enforce them.

Mr. ADAMSON. The articles you speak of would be segregated and managed by the classification spoken of in this provision

Mr. DUNN. But where would be the penalty, sir?

Mr. ADAMSON. He may have that somewhere else in that bill.

Mr. DUNN. We want a penalty both for the railway company and the shipper.

The CHAIRMAN. All the regulations have sufficient penalties to affect both the shipper and the railway company.

Mr. DUNN. There has been all through this work a very clearly marked division between the traffic department and the operating department of the railroad. The rates and their classifications are

all in the traffic department. This work as to safe transportation under these regulations is all in the operating department.

The CHAIRMAN. I understand.

Mr. DUNN. The commission have no authority of law to make regulations affecting the operating department, but only the traffic department. This proposition is to authorize regulations affecting the operating department.

Mr. ADAMSON. If we can get the duties properly classified and specialized so as to be able to understand them, there will be penalties enough. You need not be apprehensive about that.

Mr. DUNN. Would there be any objection to the passage of this bill as it stands, even though that more general bill should be passed also? I thought your committee would like to hear not only from the railway interests, but from some of the prominent shippers who would be affected by the bill. Doctor Schieffelin, of New York, a very prominent gentleman in the chemical line, is here, and also Mr. W. H. Bower, of Philadelphia, who is a prominent man in the manufacture of compressed gases.

Mr. ESCH. Just one minute. I see that this proposed amendment to the penal code gives the commission power to make regulations with reference to all these matters, and then says:

Such regulations, as well as all changes or modifications thereof, shall take effect at a date after their formulation and publication, which shall be fixed by said commission and shall be in effect until reversed, set aside, or modified.

That would make the regulation of the commission the basis for criminal prosecution?

Mr. DUNN. Yes.

Mr. ESCH. This committee heretofore has been somewhat averse to basing criminal proceedings upon regulations of an administrative board.

Mr. DUNN. That action was taken, however, sir, in the law passed in 1908, which is now in effect, so far as explosives are concerned.

Mr. ESCH. The original act, I admit, had the same provision.

Mr. DUNN. That seemed to be a question for a constitutional lawyer, and I did not care to tackle it. Whatever might be the objection to that method of delegating legislative authority it seemed to apply to the old bill as well as to the new; but with the introduction of this word "reasonable" here it seems to me that both the shipper and the railroad man are protected in that they can go to the court and get a proper decision in case the commission should take unreasonable action.

The CHAIRMAN. Do you think the commission would be as likely to take unreasonable action as some court not versed in transportation matters would be likely to take?

Mr. DUNN. I can only speak from my experience with the commission. I have seen nothing but a tendency on the part of the commission to take reasonable action.

The CHAIRMAN. I think the explosives act has not been contested in any way by the railroads or shippers so far.

Mr. DUNN. No, sir. I can say without fear of contradiction that if you go to any prominent manufacturers in this country engaged in the manufacture of explosives and ask them the effect of the bill, they will all tell you that it is good. The best evidence of that is that this bureau has been organized by the railways to enforce

these regulations and to work them up by long experience and get them in the best shape. That bureau has opened its doors to associate membership by the manufacturers themselves, and they are now members in that sense, helping to enforce the regulations.

Mr. ESCH. How do you enforce those regulations?

Mr. DUNN. The explosives regulations are enforced first by education, letting the shipper or the railroad man know what the law requires, and if then he does not come into line we go to the district attorney and report the fact.

The CHAIRMAN. We passed the act originally in 1908. Afterwards that provision was covered into the penal code, which did not take effect until the first of this month.

Mr. DUNN. The 1st of January; yes.

The CHAIRMAN. There was some complication on account of that as far as the Interstate Commerce Commission is concerned; but the Interstate Commerce Commission has formulated a regulation under that act, as I understand it.

Mr. DUNN. Yes, sir; and has made two revisions of it.

The CHAIRMAN. Did they accept the regulations of the association which prepared them?

Mr. DUNN. They accepted them with a few minor changes. They arranged for a hearing where the shippers, as well as the railroads, were allowed to come in, and made the regulation of the railroads the basis of discussion. The regulation which was finally adopted differed very little from that which was drawn up and presented by the railroad interests.

The CHAIRMAN. But they gave a hearing and did make some changes?

Mr. DUNN. Yes; we feel that now the regulations as to inflammable articles are worked up by experience, so that they are now ready to go before the commission again.

The CHAIRMAN. Have those regulations been re promulgated since the 1st of January?

Mr. DUNN. Yes; I think on the 15th of January. I had an advance copy. I am not sure about the date. They were promulgated because it was necessary to keep them alive under the new law.

The CHAIRMAN. This bill here was introduced by myself at the request of Doctor Dudley. Doctor Dudley, I believe, has left us since that time.

Mr. DUNN. Yes.

The CHAIRMAN. Since it was presented to me.

Mr. DUNN. Yes.

The CHAIRMAN. I might say that this committee had a very affectionate regard for Doctor Dudley. We heard him on several occasions with a great deal of interest and a great deal of intellectual profit.

Mr. DUNN. I am very glad to hear you say that, because Doctor Dudley was very dear to the people who were associated with him in the railway service. There never was a man who left the railway service under conditions bringing about more general regret than he. He made this the one object of his life. He started it on the Pennsylvania Railroad twenty years ago, and developed it from the Pennsylvania Railroad to other railroads, and finally that last trip that he made down to see you indirectly resulted in the attack which brought about his death—exposure to bad weather.

STATEMENT OF DR. WILLIAM JAY SCHIEFFELIN, CHAIRMAN OF THE COMMITTEE OF THE NATIONAL WHOLESALE DRUGGISTS' ASSOCIATION.

Doctor SCHIEFFELIN. Mr. Chairman, I am in the wholesale drug business in New York, and am also chairman of a special committee of the National Wholesale Druggists' Association, appointed to consider these regulations regarding the shipment of inflammables, and in their behalf as well as in behalf of my own company I want to say that we thought it would be much better if these regulations could have the force of law and could be made by the Interstate Commerce Commission, so that the shippers could be heard, when the regulations are made, by a third party. As it is now, the regulations are made by the railways, and while they have been perfectly reasonable and have listened to everything we have said, and conceded most of the things we have asked for, nevertheless it would be better, we think, if a third person could hear the arguments and decide rather than the party who had formulated the regulations in the beginning.

Of course the Interstate Commerce Commission will formulate the regulations, but, on the one hand, they are for the protection of the railroads, and, on the other hand, are more or less of an expense to the shipper. That is one reason, and the chief reason, that they ought to have the effect of law. It is embarrassing at times to have some of the shippers refuse to comply with them, and at times to have some of the railroads refuse to acquiesce.

Another reason is that some of our local authorities have undertaken to formulate regulations. I attended a hearing last week before our fire department, and they wanted to prescribe certain packages for permanganates, and chlorates, and peroxides, packages that would be somewhat more expensive than the present ones—metal containers.

We submitted to them that it would be an injury to the New York shippers if they had to use packages that the Philadelphia and Boston shippers did not have to use. In other words, no matter how much of an advance this kind of packing might be, it ought to be general; it ought to be applicable to everybody, if it is to be introduced. Of course that is not a very large matter, and yet it is a matter that interests us, and the New York commission postponed action on it in view of the fact that this bill was up and that in the event of its being favorably acted upon the regulation would be probably prescribed by the Interstate Commerce Commission.

It is not usual for a shipper or anyone in business to advocate restrictions on his business, and I have come down here chiefly on account of the appreciation I have for the work Colonel Dunn has performed. At first we were a good deal concerned as to the restrictions that we feared would be placed upon shipments of drugs and chemicals in small packages. Of course, I am not speaking for the large chemical manufacturers now; I am speaking for the druggists who ship in small packages. But I want to say that the regulations have been most reasonable, and I think in every case have been an improvement. And inasmuch as they have been applied to everybody they have not worked a hardship upon anybody. But I

strongly advocate giving the power to the Interstate Commerce Commission to make these regulations have the force of law.

Mr. ESCH. Will these regulations result in an increase of cost?

Doctor SCHIEFFELIN. These will not, because they are now in force, practically; but the regulation that I spoke about, of putting permanganates, and chlorates, and peroxides in steel barrels instead of in wooden barrels would mean a small advance in the cost. Nevertheless the chances are that it would be well worth while. As a rule these things are equally as advantageous to the manufacturer and to the shipper as to the carrier. If it is going to prevent a loss, the shipper is interested even if his loss is covered by insurance. It is not good for business to have his goods destroyed.

Mr. ESCH. I merely suggested that on behalf of the consumer.

Doctor SCHIEFFELIN. I do not think that would amount to very much.

Mr. TOWNSEND. If it is an advantage to the man who sends the goods out, why need he increase the cost?

Doctor SCHIEFFELIN. If you put a thing up in a more expensive package you generally have to increase the cost.

Mr. TOWNSEND. But if by doing it you save loss, would it not balance all right?

Doctor SCHIEFFELIN. It would not be a very large advance, in any event.

Mr. ESCH. The \$140,000 loss referred to by Colonel Dunn would pay for improved packages or containers on a great many carloads of drugs.

Doctor SCHIEFFELIN. There is no doubt of that.

Mr. ESCH. And therefore the consumer, according to Mr. Townsend's suggestion, ought not to suffer loss.

Doctor SCHIEFFELIN. The man who shipped the cement was not interested in that loss, and did not suffer by it.

Mr. ESCH. But you say that the increased cost would be quite immaterial.

Doctor SCHIEFFELIN. It would be practically trifling, I think.

Mr. ESCH. Where they ship compressed gases in these cast-iron containers, those containers are shipped and reshipped many times, are they not?

Doctor SCHIEFFELIN. Yes, sir.

Mr. ESCH. Under these regulations will there be any inspection of those containers?

Doctor SCHIEFFELIN. I understand that there will be.

Mr. DUNN. Yes, sir; there is a test to determine the qualities of the cylinder; and there is a regulation requiring the limitation of the density of the charge—in other words, of the interior pressure of the cylinders. That is certified to by the manufacturer.

Mr. ESCH. Who makes this inspection?

Mr. DUNN. The manufacturer, and then he certifies that he has done so, and that that cylinder complies with the requirements. Then from time to time we send inspectors into the manufacturers' plants to see what they are doing at that particular time.

STATEMENT OF MR. WILLIAM H. BOWER, VICE-PRESIDENT OF THE HENRY BOWER CHEMICAL MANUFACTURING COMPANY.

The CHAIRMAN. Please state your name.

Mr. BOWER. William H. Bower, of Philadelphia. I am the vice-president of the Henry Bower Chemical Manufacturing Company. We are manufacturers of so-called heavy chemicals, and we use as raw materials some of the articles known as dangerous under these regulations. We also make and ship some of the articles known as dangerous. We have been in touch with Colonel Dunn ever since he took hold of this bureau, and have consulted with him—not only ourselves, but as a member of a committee—and have found the Colonel most reasonable in listening to our objections, which were very fierce at first; but now we have come to the conclusion that these regulations are just and reasonable and ought to be carried out. We feel—and this is probably a selfish reason—that the carrier should be made to carry our articles if they are such as should be carried. The day of manufacturing chemicals in populous centers in a large way is over. You have to go out into the wilderness almost to avoid being a nuisance to the neighbors and surrounding property. If we should go out and locate on a branch railroad, or find a privately owned railroad—and there are such—and it should refuse to transport these articles, either in or out, our investment would be absolutely wiped out, so far as the manufacture of those articles is concerned.

I would like to correct a statement that was made. You said the "cast-iron containers" of compressed gases. They are not cast iron.

Mr. ESCH. I do not know what material they are made of.

Mr. BOWER. I did not want it to go down in the record of this hearing that they were cast iron. We are manufacturers and shippers of anhydrous ammonia, and we are perfectly willing to accept regulations such as have been formulated after consultation between the manufacturers of compressed gases and the bureau for the safe transportation of explosives. We consider that a great work has been done by Colonel Dunn in standardizing shipments and packages.

Mr. RICHARDSON. You say that in the beginning you were very much opposed to it?

Mr. BOWER. Yes, sir.

Mr. RICHARDSON. That is because you had not been regulated at all in the matter of explosives?

Mr. BOWER. We are not manufacturers of explosives, but of these "dangerous articles" mentioned. No, sir; we were not.

Mr. RICHARDSON. Why? Can you point out what difference there is between the regulation now and as it was when you commenced complaining so?

Mr. BOWER. In the first place, the density of the charge of compressed gas or liquefied gases in cylinders. We know that small manufacturers were overloading their cylinders. Now they can not do it.

Mr. RICHARDSON. They did this before his regulation went into effect?

Mr. BOWER. Yes, sir.

Mr. RICHARDSON. You noticed that and observed it, and it was one of the things that converted you so that you were in favor of it?

Mr. BOWER. Yes, sir; that is one of the reasons. I saw that it was for our own safety to have these regulations.

Mr. RICHARDSON. Is it any more expensive to you than it was before?

Mr. BOWER. Yes, sir.

Mr. RICHARDSON. But you are willing to bear that expense in order to carry out the regulation?

Mr. BOWER. Yes, sir; there will be no increase in the prices whatever.

Mr. RICHARDSON. Did you charge up the additional expense to your patron, to the man that purchased from you?

Mr. BOWER. No, sir; there has been no increase whatever in the price, and there will not be.

The committee, having disposed of other business, proceeded with the consideration of the bills (H. R. 9786, H. R. 9965, and H. R. 10889) "To promote the safety of employees and travelers upon railroads by compelling common carriers by railroad to equip their locomotives with safe and suitable boilers and appurtenances thereto."

Mr. LITTLEPAGE. Mr. Chairman, Mr. Curtis was called on yesterday for certain figures. He has compiled those figures for your convenience, and will take but a few minutes in presenting them.

Mr. RICHARDSON. What are those figures on?

Mr. LITTLEPAGE. On the subject of boiler explosions.

Mr. RICHARDSON. I got some figures last night also. Mr. Chairman, I would be very glad to be allowed to file a statement here from the president of the Nashville, Chattanooga and St. Louis Railway Company, Mr. J. W. Thomas, jr., who could not be here. I would like to file it with the stenographer.

The CHAIRMAN. That is in relation to boiler explosions?

Mr. RICHARDSON. Yes.

The CHAIRMAN. Hand it to the stenographer.

The statement above referred to is as follows:

Am advised that a bill has been introduced in Congress (Senate bill No. 236, House bill No. 10889), said bill being in the hands of the Committee on Interstate and Foreign Commerce. This bill provides for the inspection of locomotive boilers by inspectors appointed by federal authorities.

The bill in question is, I have no doubt, another attempt on the part of labor leaders to force, not the railroads this time, but the Government to give employment to more men.

Locomotive construction is no longer carried on by "cut-and-fit" methods, but has been reduced to a science, and if there ever was a time when locomotive boiler inspection by government inspectors was entirely uncalled for, now is the time.

I have a record before me of 35,870 miles of road in the South and Southeast. This record shows 232 cases of damages to boilers in five years. One road reports 193 of the 232 cases, this road taking into account every instance, no matter how trivial.

Out of the total number, 232 boiler damages in five years, there were 39 cases of boiler explosions; 35 of these were directly attributable to carelessness on the part of employees in direct charge of the locomotives; i. e., enginemen, firemen, and hostlers. Of the four cases that were not attributable to carelessness of employees in direct charge of the locomotives, there was—

In the first case, the foreman failed to adjust the pop or safety valve after some repairs had been made to it.

In the second case it was never determined just what caused the boiler to explode, but it was thought that the engineman screwed the valve down, so as to get more pressure on the boiler.

In the third case, this was one in which the fracture began on the inside of the boiler plate. No amount of inspection could have located the fracture before it finally broke through to the outside of the boiler.

In the fourth case the explosion was attributed to too many stay bolts being broken in close proximity to each other. This defect might or might not have been discovered by a more rigid inspection.

To say there were 228 cases of boiler damage other than the four cited above does not convey a correct idea of the true conditions, for the reason that one road alone reported 193 cases, this road reporting, as I have heretofore stated, the most trivial cases. A very high per cent of such cases could not have been prevented, no matter how rigid the inspection.

The "ear marks" of low water are well nigh unmistakable; hence there can be very little speculation in this direction.

Boiler failures are caused (1) by faulty design, defective material, or poor workmanship; (2) by neglect in maintenance; (3) by low water.

Locomotive builders test the boilers before they leave the shop, both by steam and hydraulic pressure, and the railroads test in a like manner.

Competent inspectors, employed by the railway companies, inspect the boilers, I might say, quite as often and in many instances much more frequently, than is provided for in the bill in question.

The record shows that failures from causes other than that of carelessness, i. e., low water, are exceedingly rare, whereas the damage caused by negligence of men in direct charge, i. e., enginemen, firemen, and hostlers, is responsible for a very, very large per cent of boiler damages.

The bill further provides "that such boilers and appurtenances are well made and of good and suitable material; with all openings for the passage of water and steam, respectively, and all pipes and tubes exposed to heat are of proper dimensions; and that the space between and around the flues is sufficient." Who is to determine these questions—the superintendent of machinery, master mechanic, the man in charge of boiler shop, the railroad inspector, such inspectors being selected from the most competent boilermakers in the employ of the railways—or "A boilermaker of at least four years' experience in the construction and repair of locomotive steam boilers," the latter in the government employ? Practice as to dimensions of flues vary among the different roads, some using a 2-inch and some a 2½-inch flue; the length of flue and kind of fuel used are to be taken into account. One road will specify a greater space between flues than another, the character of the water used in the boilers largely determining this question. Who is to decide, those who have had to do with this question locally for years, or any four-year boilermaker the Government may choose to send to the road?

One of the provisions of the bill is that boilers must be equipped with glass water gauges. There are hundreds, I may say thousands, of locomotives in service to-day without this appliance. This company has 262 locomotives, not one of which is so equipped. We think the glass water gauge not only entirely unnecessary, but dangerous. Many men have been injured by the fracture of the glass tubes. Then, again, the glass water gauge does not always indicate the correct level of the water in the boiler, and can easily be tampered with so as not to show the correct level of water in the boiler.

The railroads select their boiler inspectors from among their oldest and best boilermakers. To have the boilers inspected by federal inspectors, against whom there is no recourse, will tend to weaken very greatly the railway inspection, thereby decreasing the efficiency of the inspection and hence the safety of the boilers.

I might add that the railway inspectors make their examinations with a view of being within the inspection period, at the same time keeping the engines out of service as little as possible; whereas there would be nothing to prevent the government inspectors arbitrarily ordering one or more engines out of service for inspection and holding them out at their own sweet will.

Then, again, should a difference arise between the superintendent of machinery, the master mechanic, or the foreman of boilermakers and a 4-year old boiler inspector on the other hand, the decision of the latter would be law. The engine or engines could not be used except under "a penalty of \$1,000 for each and every such violation." This amounts to confiscation of property, at least for the time being.

This company has had four boiler explosions since the war, the last one in 1901. No inspection that would be made, either by the railroad or government inspectors, would have found the defect, which, in our opinion, caused the accident. The same may be said of another one of these explosions; the remaining two were caused by low water.

In the last five years this company has had 21 cases of boiler damages; the damage being such as to cause the locomotives to be withdrawn from service. One was on ac-

count of defective stay bolts, but this engine had been inspected fifty days before; whereas the bill provides for a ninety-day inspection. The other 20 cases were caused by low water.

ADDITIONAL STATEMENT OF MR. THEODORE H. CURTIS.

Mr. CURTIS. Mr. Chairman, I will make reference to circular No. 4, of which I have given you a copy, dated Chicago, Ill., January 12, 1910, by Mr. F. O. Melcher, chairman. When this circular was issued it contained the best information we could obtain at the time, but that information was gathered very hurriedly. It has been misunderstood by some, and I have been endeavoring to canvass the United States for further information.

The CHAIRMAN. You are referring to this Melcher circular?

Mr. CURTIS. Yes.

The CHAIRMAN. Do you wish to put it in the record?

Mr. CURTIS. If you wish it.

The CHAIRMAN. We do not wish to put in anything, if you do not want it put in.

Mr. CURTIS. I will submit for the record circular No. 4, revised to January 28, 1910. I will read it to you.

The CHAIRMAN. That is a revision of this same circular?

Mr. CURTIS. That is a revision, bringing it up to date. The circular No. 4 of January 12 contains the replies of 118 railroads. The circular of January 28, 1910, contains the replies of 157 railroads. This circular reads:

CHICAGO, ILL., January 12, 1910.

DATA RELATING TO PROPOSED FEDERAL LOCOMOTIVE BOILER INSPECTION.

Mr. Theo. H. Curtis, chairman of the committee on design, construction, and inspection of locomotive boilers of the American Railway Master Mechanics' Association, furnishes the following data regarding locomotive boiler inspection, under date of January 11, 1910—

That should be January 28, 1910.

The CHAIRMAN. Well, which is it? Do not get the dates mixed.

Mr. CURTIS. I will read the revised one of January 28, 1910.

Attention is called to the following information received from the different railroads in reply to the question as to the number of boiler explosions and failures, and casualties to employees and others resulting therefrom, during the period from January 1, 1905, to November 1, 1909—

The CHAIRMAN. I do not want to interrupt you, but if you are going to put that in the record, there is no necessity for reading it, unless you want to call special attention to it. Just call attention to it without reading it. You may make any reference to it that you please; but I would rather have it printed in the record in the form in which you have it, as one document.

Mr. CURTIS. I will make reference then to the revision of the circular as it is shown here.

The CHAIRMAN. Furnish to the stenographer the circular as you have it, revised down to January 28, 1910; and then if there is any reference you want to make to the facts stated in the circular you may do so.

Mr. CURTIS. I will make those references now. Under the heading of "Other causes" I refer to "Explosions of fire boxes." I change

that from ten explosions to two. This matter has been very carefully investigated, and wherever there has been an error in reporting these "other causes," and the error has been discovered, the circular has been corrected.

On the back of the circular, in the first paragraph, there is a reference made to boiler flues. The information furnished by the railroad companies, I am satisfied, is in error in two ways. One is that they have reported cases that had no bearing upon this subject. I make that "one" in place of "two."

I refer to the third paragraph, in regard to boiler fittings. Further investigation has shown us that failures were reported to us which had no bearing whatever upon this matter, and for that reason we have corrected this sheet according to our best knowledge.

In support of our action in changing the term "Other causes," I offer Exhibit No. 1, which I will read:

EXHIBIT No. 1.

The case referred to under the head of boiler shells represents a failure of a switch engine working in the yard, and was caused by an invisible crack in top seam of wagon top, just in front of forward cab window, half way between boiler head and front slope sheet.

There was no sign of a crack of any description, and the engine had undergone the shop test with 15 per cent more than the rated boiler pressure, but while the engine was working, a crack opened up three-sixteenths of an inch, and steam blew out in the cab, severely burning the engineer.

That the boiler was in good condition is evidenced by the fact that no damage was done, further than was caused by the crack opening up. If the boiler had not been well stayed, the results would have naturally been more serious.

I file that to show why we changed some of these causes.

Exhibit No. 2 is in regard to boiler-fitting changes being reported in error. It reads:

EXHIBIT No. 2.

I have made a change in the number of boiler fitting failures. When the report came to us and previous to sending same to you, as already stated, the time was short and you were hurrying us for a report, but I afterwards took up with our master mechanic and explained to him fully what was wanted. He afterwards went over the records, and you will find that the total number of boiler fitting failures is but 13 as compared with 70 given in our previous report. The difference between the report which I am sending you and that sent you previously is due to the fact that the master mechanic did not understand what you wanted and he gave a report of the number of failures that did not in any way refer to boiler fittings.

Circular No. 4, above referred to by Mr. Curtis, is as follows:

[Bulletin No. 4.]

WASHINGTON, D. C., January 28, 1910.

DATA RELATING TO PROPOSED FEDERAL LOCOMOTIVE-BOILER INSPECTION.

Mr. Theo. H. Curtis, chairman of the committee on design, construction, and inspection of locomotive boilers of the American Railway Master Mechanics' Association, furnishes the following data regarding locomotive-boiler inspection, under date of January 28, 1910.

Attention is called to the following information received from the different railroads in reply to the question as to the number of boiler explosions and failures, and casualties

to employees and others resulting therefrom, during the period from January 1, 1905, to November 1, 1909:

Summary of replies received.

| | Number. | Mileage. |
|--------------------------------------------------------|---------|---------------|
| Number and mileage of railroad companies replying..... | 157 | 157,167 |
| Locomotives operated..... | | 43,787 |
| Locomotive miles..... | | 6,012,057,467 |

Explosions and failures of locomotive boilers are divided into five classes, as follows: Explosions of boiler shells, explosions of fire boxes, damage by burning, rupture of flues, boiler fitting failures.

† Explosions of boiler shells and fire boxes, or damage by burning, are usually due to low water. Of the failures reported, 98.3 per cent were due to low water and 1.7 per cent to other causes.

Of the failures due to low water, 98.6 per cent were due to the failure of the men handling or in immediate charge of the locomotive to maintain a proper supply of water in the boiler; the remaining 1.4 per cent were due to other causes.

Automatic devices, either to maintain the water supply or to act as an alarm when proper supply is not provided, have been proposed and given consideration, but it has been determined that such devices were unreliable and have had the effect of taking away from the man in charge his accepted responsibility.

A statement of the explosions, failures, and casualties is shown below:

| | Number. | Average per year. | Killed. | Average per year. | Injured. | Average per year. |
|----------------------------------|--------------|-------------------|------------|-------------------|------------|-------------------|
| Low water: | | | | | | |
| Explosions of boiler shells..... | 14 | 2.9 | 20 | 4.1 | 16 | 3.3 |
| Explosions of fire boxes..... | 246 | 50.9 | 127 | 26.3 | 144 | 29.8 |
| Damaged by burning..... | 2,499 | 517.0 | 15 | 3.1 | 57 | 11.8 |
| Ruptured flues..... | 66 | 13.6 | 0 | — | 3 | .6 |
| Boiler fitting failures..... | 25 | 5.2 | 0 | — | 4 | .8 |
| Other causes: | | | | | | |
| Explosions of boiler shells..... | 6 | 1.2 | 10 | 2.0 | 7 | 1.4 |
| Explosions of fire boxes..... | 2 | .4 | 1 | .2 | 1 | .2 |
| Damaged by burning..... | 40 | 8.3 | 1 | .2 | 1 | .2 |
| Total..... | 2,898 | 599.5 | 174 | 35.9 | 233 | 48.1 |

In the above table, of 407 killed and injured, 386, or 94.8 per cent, were due to accidents caused by low water, while the remaining 21, or 5.2 per cent, were from other causes, some of these being the result of an incident to wrecks, and a small number are thought to be due to accidents caused by defects in design, material, workmanship, or the physical condition of the boilers or fittings, but it is doubtful if any of them could have been prevented by any proposed method of inspection in addition to that which is now in force.

In addition to the failures as shown above, there were also other failures, as shown below:

| | Number. | Killed. | Injured. |
|------------------------------|--------------|-----------|-----------|
| Rupture of flues..... | 3,204 | 8 | 21 |
| Boiler fitting failures..... | 1,609 | 2 | 51 |
| Total..... | 4,813 | 10 | 72 |

In analyzing the accidents due to the latter causes, attention is invited to the item of ruptured flues, shown to be 3,204. This, however, covers the record of an average number of 42,200 locomotives per annum for a period of four years and ten months. Assuming 250 flues to each locomotive boiler, the result shows one flue failure per year to each 15,912 flues in service, or, stated in other terms, the percentage of flue failures to the number of flues in service is six one hundred thousandths of 1 per cent.

Both of the above comparisons constitute an excellent indorsement of the present high standard of physical condition of American locomotive boilers and show how small an opportunity there is to improve the present practice of railroads, which is to make frequent inspections, averaging about one inspection for every twenty-four hours' service. A less frequent inspection could, by no possibility, improve on the present practice.

Of the 1,634 cases of boiler fitting failures reported, 1,609 are somewhat indefinite and apparently include failures occurring from causes other than the primary failure of the fittings, such as wrecks or other external accidents, many of them doubtless being of a minor character. Further investigation is being made, with a view to more clearly defining their character and importance, but we have not been able so far to obtain much additional information on account of the limited time.

At the time the different railroad companies were asked for information as to boiler explosions, casualties, etc., they were also asked to supply copies of their rules and regulations for the care and inspection of locomotive boilers. A review of such rules and regulations as were submitted shows that a very thorough and vigorous inspection of locomotive boilers is being maintained and recorded, and the rules prescribe very thorough instructions as to the proper care of the locomotive boilers.

These rules and regulations plainly show that different localities require different rules and regulations for the care and inspection of locomotive boilers.

In some localities the water that is obtainable for use in these boilers is very detrimental to the boiler, therefore very frequent inspection must be made, while in other localities the water conditions are very favorable and the period between inspections may be longer. In a general way the rules and regulations for the care and inspection of the boilers must be made to meet the conditions under which the boilers are being operated, and no general rule will apply in a practical way.

In the proposed "boiler inspection" bill now before the House of Representatives of the 61st Congress, the stipulations of the bill are many, and so vague and indefinite that a uniform interpretation by the number of men necessary to make the inspection of locomotives would be practically impossible; and this would result in a very large variation prescribed by the men, who are not responsible for the results and who would have insufficient experience and knowledge as to local conditions.

The operation of the proposed law would leave to the individual judgment of men of doubtful ability the decision as to the right of a railway company to operate a locomotive, and throw open an avenue to unjust and burdensome practices that might seriously affect its operating efficiency, its duty to the public and the Railway Mail Service, and in no way make safer the operation of the railway or provide any better protection for its employees or the public than at present exist.

From Senate document 682 the following information was obtained—the average number of employees killed and injured per annum, on account of boiler explosions on locomotives, for the period from August 1, 1903, to November 1, 1908, was 49.7 employees and others killed and 134.2 injured. This Senate document covered a period of five years and three months and includes all the locomotives in use during that time.

During the period from January 1, 1905, to November 1, 1909 (four years and ten months), the replies from 118 railroads, having 43,787 locomotives, with a mileage of 6,012,057.467 miles, show that the average number of employees and others killed and injured per annum was 38.0 killed and 63.1 injured. As the roads replying only represent about 75 per cent of the locomotives in the country, it will be assumed that the figures given represent about 75 per cent of the casualties, which would make these figures approximate those furnished by the Government as to the number of persons killed and injured, namely:

| | |
|-----------------------------------------------------|-------------------|
| Average number killed, reported by Government..... | 49.7 |
| Average number killed, reported by railroads..... | ^a 50.6 |
| Average number injured, reported by Government..... | 134.2 |
| Average number injured, reported by railroads..... | ^a 84.1 |

The statistics as given in this report are tabulated in full as received from the 157 roads furnishing the information, there being no elimination of the causes or results.

On behalf of the special committee on relations of railway operation to legislation.

F. O. MELCHER, *Chairman.*

THEO. H. CURTIS, *Chairman.*

^a Estimated.

MR. NEALE. Now, Mr. Chairman, I would like to call Mr. Crawford, of the Pennsylvania Railroad.

STATEMENT OF MR. D. F. CRAWFORD, GENERAL SUPERINTENDENT OF MOTIVE POWER ON LINES WEST OF PITTSBURG, PENNSYLVANIA RAILROAD COMPANY.

MR. NEALE. Kindly state your name to the committee.

MR. CRAWFORD. D. F. Crawford, general superintendent of motive power, lines west of Pittsburg.

MR. NEALE. You have examined this bill, have you not?

MR. CRAWFORD. Yes, sir.

MR. NEALE. Please give the committee your opinion of it.

MR. CRAWFORD. The Pennsylvania Railroad Company does not in any way object to the inspection of its locomotive boilers by the Government, but it does not wish to have its locomotive boilers inspected under the bill referred to for several reasons. First, the bill attempts to specify what a locomotive boiler shall be without telling what it shall be. It attempts to say what the fittings shall be on a locomotive boiler without telling what they are. It gives certain dimensions, or rather certain particulars as to design, without telling what the design should be. The design, construction, and appliances on locomotives and boilers represent the gradual development of eighty years' experience of the locomotive builders, of the railroad engineers responsible for railway construction and design, of the boiler-makers who make the boilers, and of the men who use them on the road.

To set aside all that experience and have one, two, or three men attempt to design a locomotive boiler that would be suitable for all the service conditions and all the water conditions in the United States is absurd. The appliances we use on the boilers differ in many localities, due to difference in water conditions. In some places as the water is boiled solid matter is deposited, there being more of this matter in some waters than in others, which makes it desirable to use a different kind of fittings.

In regard to the proposed inspection of boilers, as the rules for inspection must either be very indefinite or go into great detail, it will be impossible, by any less frequent inspection, or any inspection at stated periods by an outside inspector, to improve in any way the inspection already given by the railroads.

The inspection of locomotive boilers and locomotives is a continuous performance. It is not made at stated intervals. It is continuous. The engineman comes in from his trip and makes out a report at the end of every trip. In this report he writes the condition of the right injector, the condition of the left injector, the condition of the gauge cocks, the condition of the glass water gauge, and "safety valve lifts at blank pounds"—whatever the engine is supposed to carry—"safety valve seats at blank pounds," and gives all other particulars regarding the condition of that engine at the end of that trip.

"Stitch in time" work is then done. If there is a little hole, a little leak, it is immediately fixed. Why? Why, to make the engine fit to make a successful trip over the railroad. Long before any dangerous condition exists, a condition which puts the engine in

such shape as to reduce its efficiency is apparent. Long before a dangerous condition comes, a bad service condition comes, and no railroad is going to let an engine go out for service in bad condition, so that it will "fall down" on the road, as we call it. The worst thing we can have is an engine failure that blocks the line; and no railroad is going to let a defective engine go out for service conditions. As I said before, gentlemen, long before a dangerous condition exists, you have a bad and unsuitable service condition, and unsuitable service indications.

The Pennsylvania Railroad, and most of the other railroads that I have any knowledge of, have certain rules and regulations for inspecting their boilers. I have before me the rules and regulations for the Pennsylvania Railroad lines east and west of Pittsburg. These regulations were made many years ago, or rather started many years ago when the Pennsylvania Railroad started. They have been gradually developed through the experience of the officers and the boiler makers and the people who use the engines, in consultation. They have prepared these rules and have modified them from time to time as changes in conditions came. We extended into a new territory where we got what we call "bad water," and we had to change our rules. We extended into a new territory where we got "good water," and we had to change our rules and also the boiler fittings to best meet the local conditions and best keep the engine in shape to make a successful trip over the railroad, which is the duty of the railroad.

If I may, Mr. Chairman, I would like to quote from these rules. The rules state generally that it must be understood that all boilers are under the charge of certain officers.

The CHAIRMAN. What rules are they?

Mr. CRAWFORD. The rules of the Pennsylvania Railroad lines, east and west of Pittsburg, for testing locomotive and all other boilers.

The first paragraph states:

It must be understood that the following rules apply to all boilers, whether in locomotive service, located at shops, on derrick or other cars, or at outlying points, and that they are in direct charge of the master mechanic in whose district they may be placed.

Where no laws exist the following rules must be adhered to.

Where laws do exist, but do not require tests as rigid as the following, the necessary additional tests must be made to conform thereto.

In other words, there are no laws that we feel will take from us, or that we will let take from us, the responsibility of maintaining our boilers in shape to make a successful trip; and if they are in shape to make a successful trip they will not be dangerous to anybody.

All locomotive boilers—

I have skipped some paragraphs—

All locomotive boilers must be subject to a hydrostatic pressure of 25 per cent above their rated working pressure before being placed in service.

This test must be made not less frequently than once each year for the first two years and once each six months thereafter.

The idea of that is this: When we get a new boiler it is tested. Then the year after it is tested, and the year after that it is tested. Six months after that it is tested. The boiler does not all fail in one great big piece; a little thing fails; and we want to be sure, as the age of the boiler increases, that these little things that wear out or

deteriorate in any way do not deteriorate sufficiently to prevent us from getting the most efficient use out of that locomotive, which has cost a good deal of money.

Mr. ESCHE. Does that hydrostatic test, whereby you add 25 per cent to the normal pressure, weaken the boiler?

Mr. CRAWFORD. We do not think it unduly weakens the boiler.

Mr. ESCHE. That is, by increasing the strain above normal by 25 per cent? Does that have a tendency to weaken the boiler?

Mr. CRAWFORD. Anything over the rated working pressure, in the way of strain, has a tendency to weaken it, but we feel this way about it: The boiler is to carry a certain working pressure, and all boilers are designed with a certain factor of safety.

Mr. KENNEDY. And that factor of safety is away over 25 per cent?

Mr. CRAWFORD. Yes, sir.

Mr. KENNEDY. What would it be?

Mr. CRAWFORD. It depends on the type of boiler.

Mr. KENNEDY. Four or five times the working strain?

Mr. CRAWFORD. Yes; we can easily burst a boiler if we want to.

Mr. KENNEDY. But 25 per cent would not go nearly up to the elastic limit of your iron?

Mr. CRAWFORD. No, sir; I hope not. The whole idea of making a test a little over the working pressure is to be sure that we have put on enough metal. We do not want to put an excessive amount on because that would merely require us to design a great, big, heavy boiler and carry it around for several years, so that it would, if it had to, stand a pressure that there would be no necessity to make it stand. That would be bad engineering.

(Reading:)

When the test is being made, an authorized representative who is thoroughly familiar with boiler construction must personally witness the test, remaining outside of boiler, while another authorized representative examines the firebox from the inside.

Mr. KENNEDY. Do you have special inspectors for boilers alone, or do they examine all of the locomotives?

Mr. CRAWFORD. We have a number of inspectors. With the permission of the committee I am going to be very brief, and I would ask Mr. McKerihan, the foreman of the Altoona boiler shop, who has charge of this work and does it every day, to tell you gentlemen exactly how he does it. You will not have to depend on my memory at all.

Mr. RICHARDSON. Are not the boilers thoroughly tested before they come into the possession of the railroad authorities?

Mr. CRAWFORD. When they are bought?

Mr. RICHARDSON. Yes.

Mr. CRAWFORD. We build a great many of the locomotives.

Mr. RICHARDSON. You build them yourself?

Mr. CRAWFORD. Yes, sir; in answer to your question, judge, a boiler is designed, based on the best data available, obtained from the eighty years' experience that I referred to. That boiler is designed by competent engineers, and is then constructed of material which in every case is tested by us in our own test department. We have specifications. We make a chemical analysis of the material, to be sure that it comes within our requirements, and those requirements are the best that we know of. We then test the material, pull it apart with a testing machine, to determine the tensile strength

One of the things this bill requires is that the manufacturer shall stamp on the material the tensile strength of the material. That is no protection.

Mr. RICHARDSON. You use all possible and reasonable precautions?

Mr. CRAWFORD. Everything known to a human being.

Mr. RICHARDSON. You use all those?

Mr. CRAWFORD. Yes; and we are checking it up every day to improve it.

Mr. RICHARDSON. Allow me to ask you a few more questions. What is the cause, generally, of the explosion of these boilers?

Mr. CRAWFORD. Low water—which can be proven absolutely.

Mr. RICHARDSON. Is it not a fact that of all the damages to your boilers, due to explosions, etc., a large proportion of them occur from the negligence of employees?

Mr. CRAWFORD. Every boiler—.

Mr. RICHARDSON. What is the percentage?

Mr. CRAWFORD. Every boiler explosion is the result of a dropped crown sheet, a collapsed fire box. They are not boiler explosions, but collapsed fire boxes, and every one that I have any personal knowledge of (and that covers some twenty-five years) was caused by low water. I know it.

Mr. RICHARDSON. Is it not a fact that the glass water gauge is not an absolutely certain test? Does it not get down so low sometimes that it gets cloudy and misty, so that the man can not look through the glass?

Mr. CRAWFORD. No; there are three gauge cocks on every locomotive, and if a man tries to ascertain where the water is he can find out.

Mr. RICHARDSON. Do you contend that the glass water gauge is the cause of more explosions than any other one cause?

Mr. CRAWFORD. No, sir; I simply contend and say—I do not contend it, but state it positively, sir—that collapsed locomotive fire boxes are caused by the absence of water from them. As to what causes that low water, I think it is because of a mental lapse on the part of the engineman.

Mr. RICHARDSON. What is the percentage of boiler explosions attributable to latent defects that you could not discover in the manufacture of them?

Mr. CRAWFORD. I do not know of any on the Pennsylvania Railroad. I do not know of any case that has come to my attention in many years caused by latent defects that could not be discovered. They have been caused by low water.

Mr. BARTLETT. Please explain what you mean by "low water." I think I know, but I would like to be sure I understand it.

Mr. CRAWFORD. In every locomotive boiler the water is required to be kept at a level above what is known as the crown sheet, under which the fire is burning.

Mr. BARTLETT. Yes.

Mr. CRAWFORD. The moment that water leaves that crown sheet the crown sheet becomes red hot. You can take this piece of paper [picking up a sheet of paper] and fill it with water and put a candle under it, and you can heat that water quite hot. The minute the water disappears the paper will catch fire. When the water in the

boiler gets too low, the crown sheet becomes hot and ruptures, and there is a puff of steam all the way from a rather noisy up to a very serious one, that tears the fire box out, and tears it out with every stay bolt and every part of the boiler in the best possible condition. If anybody is around, somebody is hurt, and the number hurt depends somewhat on the number around.

Mr. BARTLETT. And the fault of the water being low is that the man in charge of the engine neglects to keep the water at the proper height?

Mr. CRAWFORD. Yes; for some reason, I can not imagine why any engineman should want to endanger his life in that way. It must be a mental lapse. It can not be anything else.

Mr. ADAMSON. Do you think that sometimes it is due to a physical lapse?

Mr. CRAWFORD. I can not imagine it.

Mr. RICHARDSON. There are some other questions that I would like to ask. You select your inspectors from the most competent and well-tried and experienced employees you have in boiler making?

Mr. CRAWFORD. We try to do so, and do it to the best of our knowledge and ability.

Mr. RICHARDSON. This bill says that the government inspector must have had an experience of not less than four years. Have you anyone in your employment as an inspector who has only had about four years' experience at boiler making?

Mr. CRAWFORD. I presume that most of our boiler inspectors have had more experience than that; but our boiler inspectors are not called on to do what these men are called on to do. A man of four years' experience as a boiler maker could not design a boiler. He has not the slightest idea about designing a boiler. He could tell you whether it leaked, or whether a rivet was tight, or whether a stay bolt was broken or not; but he does not know whether the passage around the flues is ample, whether it is sufficient, or whether the mark indicating the tensile strength means anything.

Mr. RICHARDSON. Do you mean that the government inspector would not be acquainted with that?

Mr. CRAWFORD. I mean that a boiler maker of four or five years' experience, which this bill requires, would not be competent to pass on the design and material of a boiler. He would be competent to pass on whether it had a hole in it, or whether a rivet was loose.

Mr. RICHARDSON. Then, being incompetent by reason of that lack of experience, if he had only had an experience of four or five years, it would make him totally incompetent to discharge his duty?

Mr. CRAWFORD. Absolutely. To design a good boiler a man should not only have technical experience, technical education—no matter how obtained—but he should have available the experience of others, as we have. We compare many, many drawings. We are in continuous touch with the manufacturers of steel and other boiler materials, as to the development of the art. It is one man's job—in fact, on our road it is the job of some fifteen or twenty men—to follow up the development of the art of locomotive construction.

Mr. ADAMSON. Your criticism is that the qualifications prescribed in the bill would not necessarily secure competent men?

Mr. CRAWFORD. Absolutely—and yet it is proposed by the operation of this bill to save life and limb!

Mr. ADAMSON. One more question, if you please. According to the description that you just gave of how explosions may occur through the carelessness of the engineman in allowing the water to get too low, an engine may be inspected by a thoroughly competent inspector and pronounced perfect and allowed to go out on the road, and the next day be allowed to explode through the method you have spoken of.

Mr. CRAWFORD. The next minute, sir—engines one week old, built of the best material and by the best builders in this country.

Mr. ADAMSON. Did I understand you to say that a large proportion of the explosions occurred in that way?

Mr. CRAWFORD. All that I have any knowledge of.

Mr. ADAMSON. Then how would this bill help it?

Mr. CRAWFORD. It absolutely will not help it one bit. Remember, I do not object to boiler inspection. We believe in boiler inspection, but we believe that we ought to do it. We are responsible. We are responsible to our superiors for keeping the locomotives in shape to go over the railroad. We are responsible to our patrons for hauling them safely. We are responsible to our employees in keeping the boilers and engines in shape for them to operate; and we ask them to cooperate with us in every way.

Mr. BARTLETT. And you would be responsible for the failure of the government employee to effectually inspect it?

Mr. CRAWFORD. He could not do it.

Mr. BARTLETT. But if he could, did inspect, you would be responsible to the public for his failure?

Mr. CRAWFORD. I would not be, if I could write it down in any way.

Mr. BARTLETT. I mean in law.

Mr. CRAWFORD. I do not know about the law.

Mr. BARTLETT. You would be.

Mr. RICHARDSON. Now, coming back, I want to ask you a few more questions. Have you any idea how many inspectors the Government would appoint on your system of roads?

Mr. CRAWFORD. No, sir; I have not the slightest idea. I know if the Government made a decent inspection of boilers it would have to have just as many inspectors as I have to-day. It would have to get these daily reports from the enginemans that I get to-day, and the cooperation of the engineman who runs the engine. He is asked to criticize the condition of his engine. There is a report signed by an engineman of our railroad [exhibiting a paper].

Mr. RICHARDSON. How many have you in your system?

Mr. CRAWFORD. Inspectors?

Mr. RICHARDSON. Yes, sir.

Mr. CRAWFORD. I do not know, sir. Mr. McKerihan, our boiler maker, will tell you; but every engineman, every boiler maker, every shop employee we have—every boiler-shop employee—is a boiler inspector continuously on the job, night and day, and I do not want any ninety-day inspection.

Mr. RICHARDSON. What is the mileage of your system of railroads?

Mr. CRAWFORD. Engine mileage?

Mr. RICHARDSON. Yes.

Mr. CRAWFORD. As to the mileage of the system that I have direct charge of, sir, we made in the four years and ten months reported by Mr. Curtis 270,000,000 train miles. That covered 1,800 engines.

Speaking of the lines east and west of Pittsburg, at present we have in the neighborhood of 6,100 locomotives in daily service.

Mr. KENNEDY. I see on page 2 of the bill a reference to fusible plugs. Do they put into locomotives fusible plugs?

Mr. CRAWFORD. We do not, sir.

Mr. KENNEDY. I did not know that there was any such thing.

Mr. CRAWFORD. There was such a thing.

Mr. KENNEDY. That was a small plug put in at a point that the water ought to cover, I presume, so that if the water got low and it got too hot it would melt out and allow warning to be given that the water was not high enough, I suppose?

Mr. CRAWFORD. Yes, sir; the fusible plug was a mixture of metals that would melt at a lower temperature than that at which the boiler sheet would become red hot. The idea was that this plug would melt at a lower temperature.

Mr. KENNEDY. And a small jet of steam would fly out on the fire and give warning?

Mr. CRAWFORD. Yes, sir; we at one time used them on the Pennsylvania lines, but we do not use them any more. They were not in our opinion a measure of safety.

Mr. KENNEDY. It would lead your enginemen to rely on it rather than on their own care in watching the water gauge, I suppose, for one thing.

Mr. CRAWFORD. I do not think so, because an engineman soon realizes the disastrous results that might occur to him by depending on the fusible plug. The fusible plug lets a blast of steam come down into the fire. If the fireman happened to be shoveling in coal when that happened, he was not in a comfortable location. But this was the serious thing about it: It is easy enough to take lead and various other metals and put them together in certain proportions and say that the melting temperature is a certain number of degrees. We can say it, but it is not always the case; and sometimes when an engine was going along full of water, one of the plugs would melt, and then we had a locomotive failure.

Mr. KENNEDY. How prolific a source of explosions is the coating that is deposited on the inside of an engine boiler by bad water?

Mr. CRAWFORD. I do not look on it as a prolific cause of explosions at all.

Mr. KENNEDY. You have to inspect to find it out, though?

Mr. CRAWFORD. Yes, sir; we have to do what every railroad does. We call it "washing out" the engine. The engines are washed out with special appliances—high-pressure water pipes—for cleaning the sheets, tubes, and other parts. That is done in some sections of which I have personal knowledge once a week, and in others where, because there is enough rain, we sometimes wash them, or as we call it, "change the water," every trip. Where the water is very good they are washed out less frequently. I suppose on our lines once a month is about the maximum that we go without washing the engines.

Mr. ESCUE. This bill requires stenciling upon each plate in a boiler the manufacturer's name and the tensile strength. You say that you make boilers yourself?

Mr. CRAWFORD. Yes, sir.

Mr. ESCH. Do you keep a record in your office of every plate that goes into the construction of a boiler?

Mr. CRAWFORD. Absolutely, sir.

Mr. ESCH. Together with the result of the test of its strength?

Mr. CRAWFORD. Together with the results of our own tests in our own test department of its tensile strength, its elongation, and the chemical composition of it. We keep that record by serial numbers. We do not care for the manufacturer's name on the plate. We do not want anything marked on the plate but the serial number, which refers to the office records of our test department. We want to do that ourselves. We want to make all those tests ourselves. We do not want the manufacturer to stamp the tensile tests on the plate. We will do that. That is done by the locomotive builders. We have some locomotives built outside, and I have a record of those locomotives just the same as of those we build in our own shops. The Baldwins and the American Company have built locomotives for us, and I think I can write to either company and find out all about the sheets, and where they were put in, and what their strength was. These gentlemen have endeavored in every conceivable way to make the boilers safe.

The CHAIRMAN. You stated that the marking of the tensile strength was of no value. Why?

Mr. CRAWFORD. Because it might be marked 57,000 pounds when it was 54,000 pounds. You look at it and see that it is stated to be 57,000 pounds. That does not mean anything. That means that a little piece of the sheet was put in a testing machine and pulled, and that that particular sheet stood that much. If the boiler is well designed, that is plenty. If it is not well designed, it is not enough.

The CHAIRMAN. Do you think that taking the tensile strength is of no value, then?

Mr. CRAWFORD. No, sir; it is absolutely valuable to the man who knows that record; but he must know absolutely all the calculations and particulars that entered into the design of that boiler, to make use of that figure, to apply it to anything.

The CHAIRMAN. It would do no harm to mark the tensile strength, would it?

Mr. CRAWFORD. If it was the true tensile strength, it would do absolutely no harm, and if it was not the true tensile strength I do not think it would make any difference, because the average man who read it would not know what to do with it after he had read it.

The CHAIRMAN. If it is the true tensile strength, would it be of value?

Mr. CRAWFORD. No, sir; it would not be unless he was entirely familiar with the design of the boiler, and the factors used in calculating it, and the stresses allowed. In addition to this hydrostatic test that I spoke of, we make a weekly test of the stay bolts. Every seven days a man makes a test of the stay bolts in a manner which I would rather Mr. McKerihan, our boiler maker, would describe to you, because he has done it. Various roads have different periods for doing that—some fifteen days, some twenty days, some thirty days. The time for making this test has been based on the best judgment of the officers of the railroad in question. Long before I was on the Pennsylvania Railroad they decided to make that test

once a week, and I have never seen any good reason for changing that. Mr. Gibbs, my colleague, and myself have discussed the question, and we feel that it is better to continue the established practice as it is, and not change it, although probably if it had been a longer period, from our actual experience we would not have made a change in it. So we do not feel, because we test the stay bolts every seven days, that everybody else ought to. They know their local conditions best.

Mr. ESCH. The Louisville and Nashville road, according to the testimony of Mr. Curtis, did not want the water gauge on their locomotives. What is the practice on the Pennsylvania lines?

Mr. CRAWFORD. On the Pennsylvania Railroad we use the glass water gauge. I would prefer not to use it, personally, but it is one of the practices established by our predecessors, and our predecessors knew, or had pretty good reasons for knowing, what they were doing. It is of assistance if the engineman will only use his gauge cocks, the actual openings into the boiler that Mr. Curtis referred to, and then use the water glass as a guide, just as some of our men look at an ordinary watch when they want to know approximately what the time is, but if they want to know the exact time they hunt up a time ball. It is the same with the enginemen, and the water gauge is of assistance to them. We have experimented and spent a great deal of money trying to find the best water gauge, one that will give the best indication of the water level and be the least likely to cause accidents by flying glass.

Mr. ESCH. Do you encase yours?

Mr. CRAWFORD. We use what is known as the reflex water gauge. All our engines are not yet equipped with it, but all the engines carrying over 180 pounds have been equipped with it for many years. We are going back on the older classes and putting them on. It is constructed simply of a brass back in front of which is a very heavy plate of glass with prismatic lines on the back of it. These little prisms make a reflection of the light there that shows the level of the water as a dark line. It shows it quite clearly, but it has its own difficulties, as every mechanical device in this world has. They all work at a certain efficiency.

Mr. ESCH. Have you had injuries resulting from the explosion of the water gauge?

Mr. CRAWFORD. We have had some trivial accidents, and some in which the secondary accident was more serious than the primary—for instance, a man might jump off or something like that. We instruct our men that they must put their dependence on the gauge cocks, just as the man who wants to know the right time must look at the time ball, although they may use also the water glass for general information so that they will not have to be working the gauge cocks all the time.

(Reading:)

Whenever the tubes of a boiler are removed, thus making the interior accessible for inspection, the inside of all sheets, seams, rivets, braces, bolts, stay bolts, etc., visible should be carefully examined, any defects found to be remedied, and special report made of any unusual conditions found.

When an engine comes to the shop to have its flues reset, it is not necessarily because it is in a dangerous condition, but because it has become weakened—not weakened as to strength, but where the flue is fastened into the sheet it is beaded over, and that beading wears

off, due to expansion and contraction, and the water seeps out there. Very soon so much water will get into the fire box that the engine will not steam well. That is how we determine when the flues need resetting, and when the percentage of them gets sufficient to indicate that they need resetting, that is done. That varies on different parts of the railroad. Mr. McKerihan can give you further information on that.

Mr. KNOWLAND. Do you know whether the rules which your road lays down are similar to those adopted by other roads?

Mr. CRAWFORD. The last time I went over the rules I did not go out to the far West, South, or East, where their water conditions vary greatly from ours, because their rules would not apply, but I obtained from our neighbors their rules, and I would say that the majority of the locomotives in the United States are inspected under rules quite similar to those, and inspected daily by the engineman, the man who rides on the engine, and who makes his written report at the end of his trip.

Mr. KNOWLAND. Generally, then, they are just as thorough as these rules?

Mr. CRAWFORD. What rules?

Mr. KNOWLAND. Your own.

Mr. CRAWFORD. I think so, sir. I think generally they are quite as thorough as our rules.

The CHAIRMAN. How long are those rules? How much space do they cover?

Mr. CRAWFORD. They are not long.

The CHAIRMAN. Just give them to the stenographer, so that they may be inserted in the record.

The rules of the Pennsylvania Railroad for testing boilers, above referred to, are as follows:

[No. 106-C.]

RULES FOR TESTING BOILERS.

(Superseding rules No. 106-B, dated December 18, 1903.)

GENERAL.

Responsibility for boilers.—It must be understood that the following rules apply to all boilers, whether in locomotive service, located at shops, on derrick or other cars, or at outlying points, and that they are in direct charge of the master mechanic in whose district they may be placed.

Marine, locomotive, stationary, and portable boilers must be inspected and tested in conformity with the requirements of the law.

Where no laws exist, the following rules must be adhered to:

Legal requirements.—Where laws do exist, but do not require tests as rigid as the following, the necessary additional tests must be made to conform thereto.

Internal examination.—Whenever the tubes of a boiler are removed, thus making the interior accessible for inspection, the inside of all sheets, seams, rivets, braces, bolts, stay bolts, etc., visible, should be carefully examined, any defects found to be remedied, and special report made of any unusual conditions found.

LOCOMOTIVE BOILERS.

HYDROSTATIC TEST.

Pressure for test.—All locomotive boilers must be subject to an hydrostatic pressure of 25 per cent above their rated working pressure, before being placed in service.

Frequency of test.—This test must be made not less frequently than once each year for the first two years and once each six months thereafter.

Preparation for test.—The boiler must be filled with water and heated as nearly as possible to the boiling point of water immediately before pressure is applied.

Witness of test.—When the test is being made, an authorized representative who is thoroughly familiar with boiler construction must personally witness the test, remaining outside of boiler, while another authorized representative examines the fire box from the inside.

Recording of test.—A record of each hydrostatic test must be made on standard blank provided for that purpose, each item on the blank to be filled in and signed by both authorized representatives witnessing the test, who must add, in the space provided for remarks, anything worthy of note.

Reporting of test.—The dates of all hydrostatic tests must be given by the road foreman of engines on the lines east, and by the master mechanics on the lines west, in their monthly report to the superintendent of motive power.

STAY-BOLT TEST.

Frequency of test.—The stay bolts of locomotives in service must be tested not less frequently than once each week. Stay bolts must also be tested immediately after each hydrostatic test.

When these tests are made, there must be not less than 50, and preferably more, pounds of steam pressure on the boiler, which will produce sufficient strain upon the stay bolts to cause the separation of the parts of broken ones.

Preparation for test.—If the boiler is not under steam, the examination may be made after drawing all the water from the boiler.

The latter test is preferable, when it can be made without any inconvenience.

An inspector especially trained for the service must tap with a hammer each stay bolt accessible on the fire-box end, and those not accessible must be tapped whenever possible on the outside end, and judge if any of them are broken.

Method of test.—When stay bolts having telltale holes are used, those visible must, in addition to the hammer test, be carefully inspected to insure that all of the telltale holes are open, using a drill for this purpose when necessary.

Broken bolts allowable.—No boiler must be allowed to remain in service when there are one or more stay bolts broken in the top row of fire box, nor two or more adjacent broken or plugged stay bolts in any part of the fire box, nor three or more broken or plugged stay bolts in a circle 4 feet in diameter, nor when five or more stay bolts are broken in the entire boiler.

Special examination of telltale holes.—All stay bolts having telltale holes must be thoroughly cleaned out by drill, prior to hydrostatic test, and when locomotives are in shop for general repairs.

Special examination of flexible stay bolts.—Flexible stay bolts must undergo a special examination not less frequently than once each eighteen months by removing a number of the caps in different locations, for examination of sleeves and bolts, preferably while locomotives are in shop for general repairs, and prior to hydrostatic test.

Removal of stay bolts.—Precaution must be taken to insure that all dangerous bolts are removed, and a careful examination must be made of bolts adjacent to those having defects by cutting them out in each direction until sound bolts are found.

Recording of test.—The stay-bolt inspector must keep an accurate record of the location of each imperfect bolt, marking it on the blank provided for that purpose, and forward same to the master mechanic or foreman in charge.

Reporting of test.—The dates of all stay-bolt tests must be given by the road foremen of engines on the lines east, and the master mechanics on the lines west, in their monthly report to the superintendent of motive power.

STATIONARY AND PORTABLE BOILERS.

GENERAL.

Stationary and portable boilers of odd types, such as those used over heating furnaces, water tube boilers, etc., must be tested the same as other boilers, as far as the pressure and tests are concerned, and must be examined with reference to the particular construction of each boiler.

HYDROSTATIC TEST.

All stationary and portable boilers carrying less than 100 pounds pressure per square inch must be subjected to an hydrostatic pressure of 50 per cent above their rated working pressure.

Pressure for test.—Those carrying pressures ranging from 100 to 125 pounds per square inch inclusive must be subjected to an hydrostatic pressure of 150 pounds per square inch.

Those carrying more than 125 pounds pressure per square inch must be subjected to an hydrostatic pressure of 20 per cent above their rated working pressure.

Frequency of test.—All stationary and portable boilers must be subjected to an hydrostatic test before being placed in service, and thereafter not less frequently than once each six months.

Preparation for test.—Same as for locomotive boilers.

Witness of test.—Same as for locomotive boilers.

Recording of test.—Same as for locomotive boilers.

Reporting of test.—The date of all hydrostatic tests must be promptly reported to the superintendent of motive power, giving also the general condition of boiler, noting any stays or braces found to be cracked or broken.

STAYBOLT TEST.

Frequency of test.—The staybolts of stationary and portable boilers in service must be tested not less frequently than once each month, except those in vertical, cylindrical types of boilers, which must be tested not less frequently than once each six months. Staybolts must also be tested immediately after each hydrostatic test.

Preparation for test.—Same as for locomotive boilers.

Method of test.—Same as for locomotive boilers.

Broken bolts allowable.—Same as for locomotive boilers.

Removal of staybolts.—Same as for locomotive boilers.

Recording of test.—Same as for locomotive boilers.

Reporting of test.—The dates of all staybolt tests must be promptly reported to the superintendent of motive power, giving also the general condition of boiler, noting any staybolts found to be cracked or broken.

A. W. GIBBS,
General Superintendent Motive Power,
Pennsylvania Railroad Lines East of Pittsburg.

D. F. CRAWFORD,
General Superintendent Motive Power,
Pennsylvania Lines West of Pittsburg.

OCTOBER 1, 1908.

Mr. KENNEDY. Has there been any demand from your enginemen for additional inspection?

Mr. CRAWFORD. Absolutely, no, sir. The reason there is no demand for additional inspection is that there is their own daily report made at the end of the daily trip of what the engine's condition is. I can file a copy of this blank [indicating]. I will say that this is the blank of the Washington Terminal Company, the engine house up here. That is the kind of report that is made at the engine house here. Most of the railroads in the country have a similar report. I have seen the forms of probably a dozen.

The report blank above referred to is as follows:

769B W. T. 33 8x13
Form No.-----

THE WASHINGTON TERMINAL COMPANY.

ENGINEER'S AND INSPECTOR'S REPORT OF WORK AND EXAMINATIONS REQUIRED TO LOCOMOTIVES.

Instructions.—Enginemen and inspectors must make a complete and correct report, stating the condition of each locomotive immediately at the end of its trip or day's work, whether needing repairs or not. This report must state the work and examinations required to maintain the locomotives in condition to render efficient and economical service with absolute safety. No attention will be given verbal reports or reports not signed by the engineman.

Engineman's report.

Report of condition of locomotive, initials No. on arrival at cinder pit.
 Date 190. Train No. Arrived at terminal.
 Arrived inspection pit. Locomotive is in good condition, with
 following exceptions:

Name of workman.

Tools and supplies.
 Condition of right injector. Safety valve lifts at. lbs.
 " " left " " seats "
 " " gauge cocks. Main air reservoir pressure. "
 " " glass water gauge. Train pipe pressure. "
 Steaming qualities. Heated bearings. Driver box wedges.
 Name of fireman. Signed. Engineman.
 Inspector's report of above locomotive No. Date. 190.
 Repairs and examinations required in addition to engineman's report:

Mr. CRAWFORD. If it is convenient, I should like to have the committee hear Mr. McKerihan.

The CHAIRMAN. Very well.

STATEMENT OF MR. T. J. M'KERIHAN.

Mr. NEALE. Please give your full name.

Mr. MCKERIHAN. T. J. McKerihan.

Mr. NEALE. And your connection?

Mr. MCKERIHAN. Foreman of the boiler shop and boilermakers at the Juniata shops of the Pennsylvania Railroad. My duty is to build new boilers, and to repair old ones as their condition may require it. I have been connected with the Pennsylvania Railroad for twenty-seven years, and it has been my duty to inspect all boilers that have failed from low water for the last thirteen years.

I will take just a few minutes to outline our method of building a new boiler, and also the rules as laid down for the inspection of it.

When we receive an order for 10, 20 or 50 new locomotives the order for plates is placed with the purchasing agent. When the mill is ready the order is placed in the mill. The mill notifies our test room that it is ready to roll these plates. The test department at once furnishes an inspector to inspect those plates. No plates are allowed to be rolled until our inspector is on the ground. After the inspector arrives the plates are rolled, and he inspects them to detect any surface defects, chemical defects, or other defects.

After the plates are rolled he marks each plate with a serial number. He also marks the test plate and witnesses the removal of the test piece from the plate. He sees that that test piece is boxed up and shipped to Altoona, to the test room of the Pennsylvania Railroad. The plates remain at the mill until the test room passes judgment on the plate. If the plate is O. K. it is shipped to the

works of the outside firm, and there made up; and these plates are examined in the same way for boilers that are built outside by our own test room. The plates come to us, and in working those plates if any defect arises the plate is returned to the mill and replaced.

After the boiler is carefully constructed it is tested by the hydrostatic test; 25 per cent over its rated working pressure. While the test is going on I or my assistant or some other qualified person appointed by me witnesses that test from outside, while an inspector remains on the inside. After this boiler is tested by the hydrostatic test we apply steam pressure on it to determine that the boiler is tight before we cover it, so that no leaks will develop on the road.

After the boiler has been in service one year it is tested again, and it is tested each year for two years, after which it is tested every six months.

I should have said that the serial number is marked on these plates as they are put in the boiler, and in such a position that our inspector or anyone can locate them. We have a diagram that shows where those plates are, and where the serial numbers can be found. We send to our superintendent's office a diagram showing where the serial number may be found, and also the serial number for each plate in that boiler, and by referring to our records we can find the tensile strength of any plate in that boiler.

After the boiler is in service two years it is tested every six months. If anything should occur to that boiler, say at Harrisburg or Philadelphia, the inspector at that point reports to the foreman in charge, and if the trouble is of a minor character the foreman is allowed to pass judgment on it. If it is of a more serious nature, which he does not like to pass judgment on, the master mechanic at once notifies our superintendent by wire, and he in turn notifies me. It used to be the duty of Mr. Tate and myself to do this work, but as the road has grown our business has increased so that we can not attend to it, and we have trained other men. I have four men under me, and Mr. Tate has a like number. Those men accompanied us until they became expert at the business. They go to this point and examine the failure of the fire box, or wherever the defect may be located, and they pass judgment on it. To avoid any delay from holding the engine up they give the master mechanic at that point a written statement of what to do with that boiler. Those inspectors come home with a written report. One copy is furnished to me and one to Mr. Tate. We read this report and see what they have decided to do. If their decision does not suit us we reverse it, but I may say here that I have never found it necessary yet to reverse their decision.

Mr. KENNEDY. When they have permitted the locomotive to go on its way and perform duty after such a report, has any serious accident occurred, due to their permitting it to proceed on your road?

Mr. McKERIHAN. No, sir; not under any circumstances. We pass judgment on the boiler on our inspector's report. If it does not suit us we hold it up and go to see it ourselves first; but, as I have said, I have never found that necessary. Our report goes through to our superintendent, and he forwards it to our general superintendent, Mr. Gibbs, and he turns it over to his engineers, to pass judgment on what we have done. If that decision is not reversed the master mechanic has already gone ahead to make the necessary repairs. The boiler

is repaired and turned out. Before it is turned out it is subjected to a hydrostatic test of 25 per cent over its working pressure. This, we consider, is ample. We do not consider that it is necessary to strain our boilers over that extent. It used to be our custom to test them at 20 per cent over the working pressure, but it was changed by our mechanical department to comply with the New York state law recently passed.

The stay bolts of boilers are tested once every week, whether it is a new boiler or an old one. The stay bolts of a new engine are tested at the end of a week, and if there is one broken stay bolt found in the top row the engine is thrown out of service and that bolt removed. If there are more than two broken bolts in any other part of the boiler together, those bolts are removed; or if there are more than five bolts broken in the entire boiler, the engine is thrown out of service.

The bolts are removed and the engine placed back in service. A careful record is kept on a diagram showing where those bolts have been removed. In addition to this, we have a rule that no engine is allowed to remain on the road for a period of over fourteen months without having that engine thrown into the shop. This is between east of Pittsburg and Erie. Mr. Crawford has some different rules and regulations governing stay bolts, I believe, on lines west of Pittsburg. The shell, or the back portion, is stripped down to get at the stay bolts, and we cut every fifth bolt out in the danger zone. A boiler maker, thoroughly familiar with the construction of a boiler, knows almost exactly where to find those bolts. So we cut all over the boiler, and probably cut 200 bolts out of it; and probably there are not more than 2 per cent of them that are defective. We do it as an extra precaution. The foreman boiler maker who does that work, whether it is done in the Harrisburg, Philadelphia, or Altoona shops, or the Juniata shops, where I am, is held responsible for it. The last man who has the boiler is responsible for it.

Mr. ESCH. At Altoona, where you make the boilers, do you rivet your bolts by machinery or by hand?

Mr. MCKERIHAN. By hand.

Mr. ESCH. Where they make them in the large shops like those at Schenectady, the Baldwin works, do they rivet them by machinery or by hand?

Mr. MCKERIHAN. In some places they have pneumatic hammers. That is a question to be decided by the boiler maker.

Mr. ESCH. Are they equally efficient methods of riveting?

Mr. MCKERIHAN. Either is efficient. I would state that when we have boilers built outside we have inspectors placed in the works to see that our plates are put in the boilers, and to see that the workmanship is first class; and he witnesses the test on every boiler.

Mr. ESCH. When you buy locomotives from private works do you inspect the rolling of the plates at the mill just as you do when you make the boiler yourself?

Mr. MCKERIHAN: Yes, sir. Every plate is passed on by our own inspector, tested in our test room.

Mr. KENNEDY. When you cut out these pieces from the plates that are tested, how many pieces do you take from each plate—one or more?

Mr. McKERIHAN. One from every plate. That piece is 36 inches long.

Mr. KENNEDY. Is it cut lengthwise of the plate or across it?

Mr. McKERIHAN. That would depend on how the plate was rolled. It would be immaterial where it came from, whether it came from across the plate or lengthwise.

Mr. KENNEDY. Is a tensile strain across a rolled plate practically the same as it is lengthwise?

Mr. McKERIHAN. It is the same thing identically.

Mr. NEALE. Do you know how many inspectors the Pennsylvania Railroad employs to examine these boilers?

Mr. McKERIHAN. I could not tell. I have 4 and Mr. Tate has about 4 who pass judgment on these boilers. In case something serious comes up and these other inspectors do not care to pass judgment on it, our inspector is notified. We have about 8 of those.

Mr. NEALE. I am talking about the weekly and monthly inspection.

Mr. McKERIHAN. I could not say. We have a whole lot of them.

Mr. NEALE. A great many?

Mr. McKERIHAN. A great many. Our man who tests the stay bolts tests them each week. We do not require him to get the bolts out. We do not want him to remove them. If we required him to remove those bolts there would be a bare possibility of him letting them go sooner than to get them out. Then, again, while it is severe work getting the bolts out (it is manual labor of the severest sort), he would not be in nearly so good condition to detect defective bolts; and for that reason we do not require him to get them out. All he does is to cut bolts.

Mr. RICHARDSON. Is it along the line of your duty to find out or keep a memorandum or record of the number of explosions that take place in engines?

Mr. McKERIHAN. The number of explosions?

Mr. RICHARDSON. Yes. Are you acquainted with that?

Mr. McKERIHAN. I have seen all the boiler failures for the last thirteen years, and I believe I have seen all the boiler failures on lines west of Pittsburg for about the last eight years. It has been Mr. Crawford's custom to call in myself and Mr. Tate to pass judgment on them; and I have never yet seen a boiler that had exploded—that is, where the shell exploded. It is the collapsing of the fire box. I would not term it an explosion. It is a collapsing of the fire box due to low water.

Mr. RICHARDSON. You understand, I think, as I understand it that this bill is intended to reform some evil that exists.

Mr. McKERIHAN. I beg your pardon?

Mr. RICHARDSON. Some evil that exists. It is intended to make the boiler safer by the inspection of the Government. I want to get down in the record somewhere the extent of that evil. How many explosions have occurred on all the railroads? All the presidents of railroads that have sent in statements give the number on their own road, but I do not know yet of any aggregate statement that has been filed here of all of the 238,000 miles of railroad in the country as to how many of these boiler explosions have taken place, and the patent cause of the explosion. This bill is intended to remedy something, and if it is intended to remedy something, we ought to know the extent of the evil which it proposes to remedy—

Mr. MCKERIHAN. I am not in a position to answer the question.

Mr. RICHARDSON (continuing). To see whether this great outlay of money by the Federal Government in the appointment of a large number of federal officers as inspectors, amounting to several million of dollars, is justified, and whether there is a reasonable demand for it. That is what I want to see put in the record.

Mr. MCKERIHAN. I do not think there is a reasonable demand for it. I believe that if the Federal Government inspects our boilers they will not be in any safer condition than they are now. If I am held responsible for the locomotive boilers running on the Pennsylvania Railroad, I feel myself responsible for them, and the inspector who inspects those boilers feels a sense of responsibility. If the Federal Government appoints an inspector, you will relieve our inspector of that responsibility. I am not opposed to the inspection, as Mr. Crawford stated, but I believe we should do it.

Mr. RICHARDSON. You undertake to say that there is no necessity for this law, do you not?

Mr. MCKERIHAN. I do not see any sense in the law.

Mr. RICHARDSON. That is what I am after. To show that there is no necessity for it, you must show that there are but very few explosions, and that there is no demand for any such law.

Mr. KNOWLAND. I understand your statement to be that nearly all of the accidents on your road have been due to collapsed fire boxes. No government inspection could prevent that, could it?

Mr. MCKERIHAN. No, sir; no government inspection could prevent it.

Mr. KENNEDY. Do you report the instances of boilers that collapse in this way to any government official?

Mr. MCKERIHAN. Do we report them to any government official?

Mr. KENNEDY. Yes.

Mr. MCKERIHAN. No, sir.

Mr. ESCH. You do in the case of loss of life, or injury?

Mr. MCKERIHAN. I beg your pardon.

Mr. ESCH. Is not that an accident such as you report to the Interstate Commerce Commission under the law of 1903?

Mr. MCKERIHAN. I did not catch that. Excuse me; I do not hear very well.

Mr. ESCH. Under the act of 1903 you have got to report to the Interstate Commerce Commission all accidents?

Mr. MCKERIHAN. I am not in a position to answer that. I will have to refer that to Mr. Gibbs.

Mr. NEALE. I do not think he would know about that.

Mr. MCKERIHAN. I am not in a position to know that. I will have to refer you to our superintendent, Mr. Gibbs.

The CHAIRMAN. You report all accidents to some official of the railroad company?

Mr. NEALE. That is right.

Mr. KENNEDY. Might it not be a good thing for the purpose of publicity to have some one representing the Interstate Commerce Commission see these boilers when they explode, and make a report on them?

The CHAIRMAN. That is already included in the bill passed in the House, if it becomes a law by passage in the Senate.

Mr. NEALE. You refer to the Esch bill that passed the House?

The CHAIRMAN. Yes.

Mr. NEALE. It is covered by that. As I understand, you see every boiler after it fails?

Mr. MCKERIHAN. Every boiler.

Mr. NEALE. On the Pennsylvania Railroad system?

Mr. MCKERIHAN. Yes, sir.

Mr. NEALE. If the failure of that boiler came about through the negligence of the man or men in charge, would it be perfectly apparent that the failure was caused by such negligence?

Mr. MCKERIHAN. It would be very plain. Any boiler maker thoroughly familiar with a boiler can tell at a glance.

The CHAIRMAN. You are with the Pennsylvania Railroad Company. Under the rules of that company you attempt to exercise the very highest care in the protection of locomotives and other equipment?

Mr. MCKERIHAN. Yes, sir.

The CHAIRMAN. The Pennsylvania Railroad Company rather boasts that it is the best managed road in the United States, does it not?

Mr. NEALE. We do not exactly boast.

The CHAIRMAN. I am asking him that. Is not that the boast of the mechanical branch of the road, that it is the best equipped road in the United States? Is not that your boast, that in your branch of the service it is the best equipped road in the United States?

Mr. MCKERIHAN. Do you ask me if I consider it as good as any road?

The CHAIRMAN. I want to know whether you do not consider it the best?

Mr. MCKERIHAN. I am not in a position to say that. I only inspect ours. I know that ours is good.

The CHAIRMAN. Well, you are more modest than most of the Pennsylvania people. [Laughter.]

Mr. MCKERIHAN. I know that ours is good. I know that a better bill than this will have to be introduced to improve on it.

The CHAIRMAN. What I wanted to get at was whether your judgment of the proposition involved in the bill is based solely upon its effect upon the Pennsylvania Railroad Company, or upon railroads generally, and railroad interests throughout the United States. Do you think that the same care is exercised in the purchase of locomotives and the testing of the tensile strength of plates, and the manufacturing and testing of the locomotives themselves, by all the other railroads, that is exercised by the Pennsylvania?

Mr. MCKERIHAN. I am inclined to believe so. I am a member of the International Master Boiler-Makers Association. I attend their meetings, and I know most all of them and have been in conversation with them; and from what they tell me I believe and claim to believe that their inspection is just as good as what ours is, and probably a little better.

The CHAIRMAN. Take the Baldwin Locomotive Works: Does it manufacture no locomotives except upon order, with an inspector of the company ordering it on hand to watch the process?

Mr. MCKERIHAN. They build no locomotives without our inspection.

The CHAIRMAN. I am not talking about yours, but how they do with other companies. Do they build no locomotives except upon

previous order and with the inspector of the road on hand to watch the process?

Mr. LITTLEPAGE. I think perhaps a representative of that company could give you that information direct.

The CHAIRMAN. Very likely, but I want to know whether this gentleman knows or not.

Mr. MCKERIHAN. I did not just catch that.

The CHAIRMAN. Very well. It was plain enough.

The reporter read the question put by the chairman, as follows:

"Take the Baldwin Locomotive Works: Does it manufacture no locomotives except upon order, with an inspector of the company ordering it on hand to watch the process?"

Mr. MCKERIHAN. I am thoroughly familiar with the Baldwin Works. We have had several engines built there, and when an outside road orders an engine, it has an inspector to inspect the engine. Their engines are just as safe as ours are, built in our own shops.

The CHAIRMAN. The committee will now stand in recess until 2 o'clock this afternoon, without objection, and this afternoon, if the committee will bear with me, we will either continue until we complete this hearing, or else we will take a recess until to-night, so as to try to dispose of the witnesses here on these questions.

(The committee thereupon (at 12 o'clock m.) took a recess until 2 o'clock p. m.)

AFTER RECESS.

The committee reconvened at 2 o'clock p. m., Hon. James R. Mann (chairman) presiding.

Mr. FAULKNER. Mr. Chairman, before you hear the next speaker, you or Judge Richardson, I do not know which one, asked a question on this ash-pan bill introduced by Mr. Townsend to ascertain whether we could present the record of the number of locomotives that had been fixed in accordance with the former law, and whether they had shown due diligence. I find a report here made by the block signal and train control board to the Interstate Commerce Commission giving that information in a very brief space and showing that they anticipated only 2,029 engines would be required to be adjusted to meet this law on and after the 1st of this January.

The CHAIRMAN. That report was made, or at least I had a copy of it, early in December.

Mr. FAULKNER. Yes; that report was made in December; but this furnishes the information that was asked, showing the diligence of the railroads. If the committee wants that I can have it inserted in the record.

The CHAIRMAN. Oh, I have all that.

Mr. FAULKNER. You do not want it inserted in the record?

The CHAIRMAN. I think it is a public document, and we have it here.

Mr. FAULKNER. Very well.

Mr. PAULDING. Mr. Chairman and gentlemen, some questions were asked this morning as to explosions of boilers. I have here some records, made up for me by the public service commission of the State of New York, of accidents to boilers in the years 1908 and 1909, and during the year 1907 after the 1st of September. These are accidents which were investigated by the commission, the accidents having been reported to them by the railroads.

The CHAIRMAN. Investigated by the New York commission?

Mr. PAULDING. Investigated by the New York commission, and the record is an official one. It shows two in 1907 after the 1st of September, 20 during 1908, and 5 during the year 1909. That was in the whole State of New York. Of those, 98 per cent were caused by low water, according to the investigations of the commission. I will give this record to the stenographer.

(The matter referred to by Mr. Paulding is here inserted in the record, as follows:)

Investigated accidents.

| Date. | Cause. | Injured. | Killed. |
|----------------|-----------------------------------------------------------------------------------------------|----------|---------|
| 1907. | | | |
| October..... | Low water; company removed fittings so we could not make examination. | 2 | |
| Do..... | Low water; fittings not examined..... | 1 | |
| 1908. | | | |
| January..... | Low water; tank well accidentally closed is supposed to be cause of low water. | 1 | |
| Do..... | Pocket flue blew out; poor workmanship..... | 1 | |
| Do..... | Arch tube burst; boiler water space filled with scale..... | 1 | |
| February..... | Low water..... | 1 | |
| Do..... |do..... | 2 | |
| March..... | Defective steam-heat regulator..... | 1 | |
| April..... | Low water; fittings not examined..... | | 3 |
| Do..... | Low water; company removed fittings so no examination was made..... | 5 | |
| July..... | Low water..... | 1 | |
| August..... | Bursted flue; bad weld..... | 1 | |
| September..... | Washout plug blew out; poor inspection by incompetent man..... | 1 | |
| October..... | Stud in back head blew out..... | 1 | |
| Do..... | Low water; fittings removed by company so no examination was made..... | 1 | |
| Do..... | Plug blew out of patch; poor workmanship..... | 1 | |
| Do..... | Low water; water glass and gage cocks removed by company so no examination could be made..... | 1 | 2 |
| Do..... | Low water..... | 1 | |
| November..... | Low water; water glass stopped up..... | | 2 |
| Do..... | Low water; defective water glass..... | 2 | 1 |
| December..... | Low water..... | 2 | |
| Do..... | Defective flue..... | 1 | 1 |
| 1909. | | | |
| March..... | Low water..... | 1 | 2 |
| July..... | Flue pulled out; beads burned off flue..... | 1 | |
| September..... | Low water..... | 1 | |
| October..... | Defective staybolts..... | 1 | |
| November..... | Low water..... | 3 | 2 |
| Do..... |do..... | { a 1 } | 1 |

a Fatal.

STATEMENT OF MR. WILLIAM L. AUSTIN, OF PHILADELPHIA, PA., REPRESENTING THE BALDWIN LOCOMOTIVE WORKS.

The CHAIRMAN. What is your position with the Baldwin Locomotive Works?

Mr. AUSTIN. I am one of the vice-presidents and my particular part of the business is the designing of locomotives. I have been at that for thirty-nine years and a half.

The CHAIRMAN. Have you anything to do with the actual construction of locomotives?

Mr. AUSTIN. Only in giving directions; not in using the hammer myself. But we make the actual working drawings from which all the boilers are made.

The CHAIRMAN. Well, I know; but I was not asking a foolish question, although it might seem so. You do the designing. Do you have anything to do with the construction work?

Mr. AUSTIN. With the construction? Do you mean in the shop?

The CHAIRMAN. Yes.

Mr. AUSTIN. No, sir, not practically.

The CHAIRMAN. Very well; proceed.

Mr. AUSTIN. I wish to speak of this bill from the standpoint of the manufacturer of locomotives. I assure you that there is no part of a locomotive that receives more intelligence in design, or more conscientious care in workmanship, than the boiler. We realize that it is the most important part, and also the most dangerous part, of a locomotive. I have been in the business for thirty-nine and a half years, and I have made a special study of many of the details of the boiler, and yet I do not profess to know it all; but I assure you that as makers of locomotive boilers, we realize the necessity of making them just as good as the brightest minds can dictate. In my duties as a designer and builder I have had, many a time, to ride on locomotives, to do a little firing occasionally, and to dig into the detail of things, and of course it is natural under those circumstances we want to know that the boiler is safe. We never know when we will ride on the engine ourselves.

As to the desirability of the general bill, I do not know that I am competent to advise, but I have never yet felt an aching void for the lack of it. It seems to me that the proposed bill in some respects falls so far short of the present practice that if it were made law it might encourage lax methods. To illustrate, let me speak briefly of boiler material, testing, and constructing. We make boilers of the best material possible to be obtained, suitable for the purpose. To begin with, the rolling mills are furnished with a specification which insures a high grade of material. This is shown by Exhibit No. 1 [submitting paper]. I will not read it, but I have marked on it in the margin the part referring to the specification, under the head of physical tests of material. The plates are first tested by the manufacturer, and, if found correct to his satisfaction, they are sent to the locomotive builder. Then we make a careful test of our own of each plate. We make not only a physical test but a chemical test as well. The detail of this test is shown by Exhibit No. 2, a copy from a test sheet of a complete set of locomotive boiler plates. These records are kept on file year after year, so as to be available for reference at any time during the life of the boiler, in case of any trouble.

In Exhibit No. 3 are shown some sample drillings from a boiler plate, such as were used in making the chemical analysis as shown in Exhibit No. 2 [submitting sealed package]. Drillings similar to these are made from every boiler plate that is used, and every one of those samples is analyzed.

(The exhibits submitted by Mr. Austin are appended to this hearing).

Mr. ESCH. You mean chemically analyzed?

Mr. AUSTIN. Chemically analyzed; each plate is tested physically, and the drillings are analyzed chemically.

Mr. ESCH. And you have certain standard requirements which must be reached by that metal before the plates can be used for boiler purposes?

Mr. AUSTIN. Yes. The tests have to be made before the plates are used. In contrast with this, please notice that the bill simply calls

for "the number of pounds tensile strain it will bear." If you ever do pass a bill, I beg you to change this clause, for it does not mean anything at all. In testing the material, if we find that any plates fall short of the specification, they are rejected.

The next stage is the putting together of the boiler. This must be done according to a rigid specification also, as shown in this Exhibit No. 4, which I need not read [presenting paper]; but all this emphasizes the statement that there is no part of the locomotive that receives more care in the design, material, and workmanship than the boiler. I would like to advise strongly against the item in the bill calling for all plates to be stamped, first, with the name of the manufacturer; second, the place where manufactured, and, third, the number of pounds of tensile strain it will bear. This practice would be liable to injure the plates, especially the thin ones. I have sometimes seen the name of the maker rolled into the plate as it passed through between the rolls, hot, but to deliberately stamp this long legend on each plate with steel letters and figures I think would injure the plates by starting incipient fractures. What is asked for means a good many nicks in each plate, and each nick is an injury. Why have the name on the plate, anyway, or why have the place of manufacture? Who cares where it was made? The important question really is, What is the plate good for? But in view of the very complete records that are kept, as I have explained, why stamp an incomplete record on the plates? If, however, you must have something, why not simply say, "Ultimate, 50,000," or whatever the figures are? If, instead of this, you stamp on each plate first the maker's name, second the place manufactured, and third "It will bear 10,000 pounds," you have imparted information of absolutely no value to either a designer or inspector. What would figures stamped on the plate actually indicate? Simply that some one had taken a hammer and stencils and put down a row of figures; that is all. If the Government can not tell the weight of sugar, with inspectors watching the scales, how are they going to tell anything about the strength of steel plates stamped without any inspector present?

In designing a plate for a boiler, we speak of the ultimate strength of the steel plate, of its limit of elasticity, of its per cent of elongation, of its reduction of area, and of its chemical composition, in order to judge of its suitability. Then, too, in designing a boiler, its strength depends not on its tensile strength alone, but on the proportion of its seams, braces, stays, rivets, and bolts. The strength of a boiler depends on the strength of its weakest parts. The weakest parts are the seams. These seams are of various forms, and their value depends on their relation to the solid plate. Some seams are 56 per cent of the solid plate; some are 71 per cent and some are 84 per cent of the strength of the solid plate, and there are various other estimates; so that with a given estimated strength, the boiler will stand a higher or lower working pressure, depending on the strength of seam used as well as the other details used that go to make the complete boiler. In general, we speak of the strength of a boiler in terms of its factor of safety. If a boiler is to carry a working pressure of 200 pounds per square inch, and we give it a factor of safety of 4, we mean that it would require 800 pounds to the square inch to destroy it.

As to the matter of water gauges, I have ridden on locomotives a great deal for the last thirty-five years, sometimes for weeks and months at a time, and I have frequently ridden on engines that had water gauges and I noticed that they were out of order; the glass was often gone. I would say to the engineer, "Hello, what is the matter with your water gauge?" "Oh, we don't bother anything about that. The water gauge does pretty well, but we can't depend upon it, and so I don't bother replacing the glass."

The CHAIRMAN. Is that quite a common practice?

Mr. AUSTIN. I have found that on quite a good many locomotives.

The CHAIRMAN. Would not that argue very great negligence on the part of that particular railroad company, that an engine could come in and go out constantly with its water gauge broken?

Mr. AUSTIN. It would if they considered it a necessity; but there is a great difference of opinion on that. Of course I think it is a habit—

The CHAIRMAN. The railroad company that has it there and endeavors to keep it on some engines would consider it of necessity enough to have it?

Mr. AUSTIN. Yes.

The CHAIRMAN. Would it not argue negligence on the part of the company to just let it go?

Mr. AUSTIN. I think it would.

The CHAIRMAN. Might not that negligence easily extend further?

Mr. AUSTIN. Yes.

The CHAIRMAN. When you find that the railroad company's officials are so negligent that they will not fix the water gauge, might not that apply to other parts of the locomotive?

Mr. AUSTIN. It might; yes. It would not necessarily follow, but it might. It is an indication. Straws show which way the wind blows.

Mr. PETERS. I would like to ask Mr. Austin what percentage of locomotives are turned out by the Baldwin Locomotive Works without water glasses?

Mr. AUSTIN. Well, I suppose about one-half.

Mr. ESCH. What is your annual output?

Mr. AUSTIN. We have made as many as 2,200 engines a year. Some years we make 1,000. This year we hope to make about 1,500. It varies a great deal, depending upon the times.

Mr. ESCH. Have you ever gotten an order from a railroad company not to put on the water gauge?

Mr. AUSTIN. Oh, yes; we always put it on unless they request it to be omitted.

Mr. ESCH. What percentage of such orders do you get? On how much of your total output do you have requests that they shall not be put on?

Mr. AUSTIN. From memory, I should say just about one-half.

Mr. ESCH. One-half. Are they confined to any particular section of the country or are they scattered all over it?

Mr. AUSTIN. They are scattered promiscuously.

Mr. ESCH. Some systems use them and others do without them?

Mr. AUSTIN. Yes.

Mr. ESCH. Do you think that in the manufacturing of your water gauge you have it so that it is about as safe an appliance as you could

put on, in encasing it properly; or can you make a water gauge that may not split or burst and injure the eyesight of the engineer or fireman?

Mr. AUSTIN. Well, I do not suppose that it is possible to make one perfect. They are made with shields that protect the engineer pretty well, but I do not think you could make one that would be absolutely perfect—that would not under certain conditions possibly injure the engineer.

The CHAIRMAN. Have you finished your statement?

Mr. AUSTIN. Yes, sir.

The CHAIRMAN. I suppose you make locomotives only on orders?

Mr. AUSTIN. Yes, sir; only on order.

The CHAIRMAN. And do those orders have specifications?

Mr. AUSTIN. You mean, when you say on order—

The CHAIRMAN. I mean, on order.

Mr. AUSTIN. We generally do not make locomotives unless we have an order for them. Occasionally we make a locomotive on stock, hoping someone will come along and buy it. As a rule locomotives are made on order.

The CHAIRMAN. What proportion are made for stock?

Mr. AUSTIN. A very small minority; not half a dozen a year.

The CHAIRMAN. Do the companies, when they order, furnish specifications for the engines, in some way?

Mr. AUSTIN. Not always; no, sir.

The CHAIRMAN. What do they order?

Mr. AUSTIN. What do they order?

The CHAIRMAN. When a company does not furnish specifications, what is its order?

Mr. AUSTIN. They say they would like us to build a certain number of consolidation engines with a certain sized wheel, to haul a certain number of tons up a certain grade, and they ask us to make out specifications for that engine.

The CHAIRMAN. Do they tell you how much they want to pay?

Mr. AUSTIN. No; we make out the specifications and estimate the cost of the engine and tell them what the cost of the engine is.

The CHAIRMAN. Then you make the specifications?

Mr. AUSTIN. Yes, for the railroad.

The CHAIRMAN. You make the locomotives on specifications from the railroad except that you prepare the specifications?

Mr. AUSTIN. Yes. Sometimes the railroad will prepare specifications, and we go over them and estimate on them.

The CHAIRMAN. What I wanted to get at is, whether when you manufactured the locomotives they were made on specifications or not.

Mr. AUSTIN. Oh, they are all made to specifications, every one; either ours or the purchaser's.

Mr. ESCH. There are some well-known types. Do they order by type?

Mr. AUSTIN. Yes, sir; the type has to be settled some time or other in the transaction.

Mr. ADAMSON. If you make the specifications and they adopt them, they become their specifications, do they not?

Mr. AUSTIN. Yes, you might say that.

The CHAIRMAN. Is there a wide variation in the specifications, which does not refer merely to the power, submitted by railroads from different parts of the country?

Mr. AUSTIN. Yes, sir.

The CHAIRMAN. Do some railroads take much cheaper made locomotives than other roads would take for the same service?

Mr. AUSTIN. Yes, sir.

The CHAIRMAN. Are the boilers equally strong, or do they take more chances on boilers in some cases?

Mr. AUSTIN. Realizing the importance of the boiler, if we find any defect in the boiler we call their attention to it in very pronounced terms.

The CHAIRMAN. I would presume you would not want to turn out any boiler that you do not believe would be practically safe.

Mr. AUSTIN. Yes, sir.

The CHAIRMAN. But is there a variation in the expense and in the care with which boilers are turned out for different companies?

Mr. AUSTIN. Oh, no; not a bit. I do not know of anyone who goes on the theory of building a cheap boiler. They all want a first-class boiler, and they get it.

The CHAIRMAN. It makes no difference how hard up a road may be or how little business it may have, they still want a good boiler?

Mr. AUSTIN. And they get just as good a boiler as the best road in the country.

The CHAIRMAN. Yes.

Mr. AUSTIN. Even sometimes to getting their engines below cost.

The CHAIRMAN. You are not an eleemosynary institution, are you?

Mr. AUSTIN. We have made engines below cost rather than make them a poor boiler, I will tell you that.

The CHAIRMAN. That is, the railroad company, then, was willing to take a poor boiler, was it not?

Mr. AUSTIN. No, sir; they did not get a poor boiler.

The CHAIRMAN. In your opinion, then, there are no cheap boilers made for locomotives?

Mr. AUSTIN. No, sir.

The CHAIRMAN. By your company or by any other reputable company?

Mr. AUSTIN. No, sir; I do not know of anything made in the United States of a higher grade of work or more honest workmanship than a locomotive boiler.

Mr. BARTLETT. Do you mean cheap, Mr. Chairman, or inferior?

The CHAIRMAN. I mean cheap, carrying with it "inferior."

Mr. BARTLETT. I beg your pardon.

The CHAIRMAN. No, the correction was proper. That is what I meant; inferior, because cheap.

Mr. ESCH. When one removes a stay bolt or chisels off the head of a stay bolt or a portion of it, if that bolt is used twice does not that enlarge the hole, or weaken the plate at that point?

Mr. AUSTIN. It does not weaken the plate. It may bruise the thread on the bolt, or get the thread out of shape, and in reshaping stay bolts the threads are tapped a little larger, so that the new bolt that goes in is a little larger than the old one, and each time that stay bolt is replaced it is necessarily made of a slightly larger diameter.

STATEMENT OF F. J. COLE, CONSULTING ENGINEER, AMERICAN LOCOMOTIVE COMPANY.

Mr. COLE. Every effort is made by the company I represent to construct locomotive boilers in the best and safest manner known to the art, in regard to the design, material, and workmanship. The designs are made by experienced men; the calculations of thickness of plate, number and diameter of braces, size and spacing of stay bolts, riveted seams, and so forth, are made according to printed rules adopted only after very careful consideration and approved by an engineering committee composed of competent men of long experience in the construction of boilers. These figures for each design are checked over by a second man, and the drawing looked over and approved by a third person. The water spaces are carefully proportioned according to the size of the boiler, and such local conditions as quality of feed water, and so forth, as may be available. The factors of safety of the cylindrical shell are higher than for steamboat boilers. In a general way the entire design, we think, is better than the usual form of stationary and in some cases of marine boilers.

As to material, the steel plates of all boilers are made by the open-hearth process to specifications conforming to bulletin No. 10 of the American Society for Testing Materials, representing in many respects more rigid requirements than are prescribed by the United States Steamboat Inspection Service. Two test pieces, 2 by 18 inches, are cut from each plate and tested for ultimate strength, elongation, bending, and so forth, and a record is made showing the maker's name, serial number, strength, elongation, chemical properties, number of boiler, location in said boiler, date, and name of purchaser. If a question arises in future regarding the quality of any plate after the boiler has been in service, the complete history can be furnished.

Mr. BARTLETT. May I ask you a question there?

Mr. COLE. Yes, sir.

Mr. BARTLETT. Then if a boiler explodes while in use by the railroad, or any injury happens to it while in use, if the boiler was bought from your company the railroad company could by writing to you secure all particulars as to the material and the tests to which it had been subjected before the boiler was built?

Mr. COLE. Yes, sir. We can give the complete history of the material.

Mr. BARTLETT. Not only of the material, but you submit all materials to tests before you make the boiler, do you?

Mr. COLE. Our men who make the tests see that these specimens——

Mr. BARTLETT. I say, you make them?

Mr. COLE. Yes; we make them ourselves.

Mr. BARTLETT. That is all I wanted to know.

Mr. COLE. We keep our own records. We consider that this affords better protection, and is better practice, than stamping the plate with the number of pounds of tensile strength, as proposed in the bill, because the marking is often effaced in bending, flanging, or working the plate, and unless supplemented by information as to elongation, bending, chemical analysis, and so forth, it does not sufficiently safeguard its quality.

The workmanship is constantly supervised by the foreman and our own inspectors, always on duty for this purpose in the boiler shop. I have no hesitation in saying to this committee that the construction of locomotive boilers is as good as that of any class of boilers built, and in many cases they are far superior in design, material, tests, and so forth, to those built for other purposes. A careful examination of our printed rules, comparing them with current practice accepted for the construction of boilers for other purposes, will confirm this assertion. I will submit our specification for material [submitting printed paper]. We have all these printed rules for our guidance in building boilers, as to whether there are any requirements which are asked for by the railroad company. These are what we use for all boilers that we build.

The test is to determine the tightness of the boiler when new. Calculations can only be relied on to ascertain ultimate strength and safe working pressure. I am of the opinion that locomotive boilers are freer from accidents causing injuries to persons than any other class of boilers, notwithstanding the fact that the service under which they are operated is much more severe.

(The specification referred to is here inserted in the record, as follows:)

AMERICAN LOCOMOTIVE COMPANY. SPECIFICATION No. 1-D.

BOILER AND FIRE-BOX STEEL.

[Conforming to Bulletin No. 10, American Society for Testing Material.]

Material.—Open-hearth steel.

Chemical.

| | Boiler. | Fire box. |
|----------------------------|------------|------------|
| | Per cent. | Per cent. |
| Phosphorus: | | |
| Acid steel, not over..... | 0.06 | 0.04 |
| Basic steel, not over..... | .04 | .03 |
| Sulphur, not over..... | .05 | .04 |
| Manganese..... | .30 to .60 | .30 to .50 |

Physical.

| | Boiler. | Fire box. |
|----------------------------------------------------|----------------------------------|---------------|
| Tensile strength, per square inch..... | pounds.. 55-65,000 | 52 62,000 |
| Elastic limit, per square inch, not less than..... | tensile strength.. $\frac{1}{2}$ | $\frac{1}{2}$ |
| Elongation in 8 inches, not less than..... | per cent.. 25 | 26 |

For each one-eighth increase in thickness above $\frac{3}{4}$ inch a deduction of 1 per cent will be made from the specified elongation.

Stamping.—Plates must be stamped with maker's name or mark in two places; double match marks on test and plate before shearing; serial number near match mark. Test coupons must be stamped with serial number and order number near match mark; melt number.

Test pieces.—Two tests, 18 inches long by 2 inches wide, cut lengthwise from each plate as rolled in boiler steel, and each plate as ordered in fire-box steel, match marked at one end to plate with double ring stamps, rings to be not less than 2 inches in diameter; must be provided to be used in making tensile and bend tests noted hereon.

Bending tests.—Test pieces prepared for the purpose or the end of tensile specimens, without other treatment, both before and after quenching, shall bend cold 180° flat without fracture on the outside of the bent portion, quenching to be done at a bright cherry red, with the water at 80° to 90° F.

Nick bending.—Nick bending test will be made on each fire-box plate from one end of the tensile specimen. Such tests showing seam or cavity of more than $\frac{1}{4}$ inch long will be considered laminated, and the plate represented rejected.

Marking.—Plates must have order number, size, scale weight, and like data painted on in white lead.

Inspection.—Plates must be true to size. Any showing injurious defects, such as seams, snakes, pits, scale, lamination, etc., or indentions 5 per cent of thickness in boiler plate and 3 per cent of thickness in fire-box plate, will be rejected. Plates more than 0.01 inch thinner than ordered or which fail to meet above chemical, physical, and bending requirements will be rejected. Plates will be inspected and tested at the mills unless otherwise specified, mills to furnish invoices when shipments are made.

Table of allowances for overweight for rectangular plates when ordered to gauge.

[The weight of 1 cubic inch of rolled steel is assumed to be 0.2833 pound.]

| Thickness of plate. | Width of plate | | |
|---------------------------|------------------|-------------------|------------------|
| | Up to 75 inches. | 75 to 100 inches. | Over 100 inches. |
| | Per cent. | Per cent. | Per cent. |
| $\frac{1}{4}$ inch. | 10 | 14 | 18 |
| $\frac{1}{8}$ inch. | 8 | 12 | 16 |
| $\frac{1}{16}$ inch. | 7 | 10 | 13 |
| $\frac{1}{32}$ inch. | 6 | 8 | 10 |
| $\frac{1}{64}$ inch. | 5 | 7 | 9 |
| $\frac{1}{128}$ inch. | 4 $\frac{1}{2}$ | 6 $\frac{1}{2}$ | 8 $\frac{1}{2}$ |
| Over $\frac{1}{64}$ inch. | 3 $\frac{1}{2}$ | 5 | 6 |

NEW YORK, June 1, 1903.

Mr. BARTLETT. Do you make boilers for stationary engines also?

Mr. COLE. Not to any extent.

Mr. BARTLETT. So that you can not give any comparison between the number of accidents or explosions in the case of stationery boilers and in the case of locomotive boilers?

Mr. COLE. No, sir; except from such printed data as are published elsewhere.

Mr. BARTLETT. Have you that information?

Mr. COLE. I have not got it now; but that is my impression. If we happened to build stationery boilers, we would build them to locomotive boiler requirements; but I am speaking now of the general requirements for the work. The terms of the bill are vague and indefinite, not nearly as good as current practice, nor does it afford the same protection as is given by the present rules of the builders and the continuous inspection by the railroads.

Mr. ESCH. This investigation has been confined very largely thus far to an investigation of the water cock and—what do you call the others?

Mr. COLE. The try cocks and gauge cocks.

Mr. ESCH. Yes; I notice in section 1 of this bill it requires that the tubes and pipes should be of proper dimensions and free of obstruction. Is there any difference as to sizes and proper dimensions of those portions of the boiler?

Mr. COLE. Those will vary somewhat with the sizes of the boilers. The tubes of a locomotive are usually of two sizes, 2-inch outside and $2\frac{1}{4}$ inches, and the water legs and around the fire box are usually made in comparison to the size of the boiler.

Mr. ESCH. Are any explosions due to the fact that such tubes were not of proper dimensions; have any such come to your knowledge?

Mr. COLE. Not to my knowledge. We are building boilers with the tube spacing from less than five-eighths of an inch—I think nineteen thirty-seconds is the least—to $1\frac{1}{8}$ or $1\frac{1}{4}$ inches, and that depends largely on the character of the boiler in which they are used or the locality where they are used.

Mr. KENNEDY. What do you mean by the spacing of the tubes?

Mr. COLE. That is, the spacing of the tubes in the boiler; the actual distance that the tubes are apart.

Mr. KENNEDY. The spacings are the distances from one tube to another?

Mr. COLE. Yes, sir.

Mr. KENNEDY. And the fire passes through those spaces around the tubes?

Mr. COLE. No, sir; the fire passes through the tubes, and they are surrounded by water. The space is occupied by the water.

Mr. ESCH. In your experience have you known any such explosion to arise because there were not proper spaces between and around the flues?

Mr. COLE. No, sir.

Mr. ESCH. Would it be possible to have an explosion arising from not having proper space?

Mr. COLE. I think there are practical limitations that would be reached before you arrived at a dangerous condition. I think in boilers for fire engines for municipal purposes the tubes are spaced sometimes only a quarter of an inch or less apart. They are made so that they will steam very quickly, generate the steam in a few moments; but in a locomotive the spacing is from five-eighths of an inch to an inch and a quarter. Probably the standard would be somewhere about three-fourths of an inch, and that is usually amply sufficient.

Mr. ESCH. How many tubes are there in one of these large engines?

Mr. COLE. Some of them would have as many as 400 2-inch tubes.

Mr. ESCH. What is the practice in reference to inserting fusible plugs, with your company?

Mr. COLE. We do not insert fusible plugs unless they are asked for by the railroad company, except in the State of Massachusetts, where there is a state law requiring it.

Mr. ESCH. What do you say as to their practicability as a safety device?

Mr. COLE. Personally I do not attach any importance to them as a safety device, because I had years of experience in their use on railroads. Unless they are constantly watched and renewed, they can not be relied upon as a measure of safety.

Mr. ESCH. What is the practice of your company with reference to the water gauge?

Mr. COLE. We put a water glass and three gauge cocks on every engine unless it is specified to the contrary, except in the case of some small low-pressure engines that are used for contractors' purposes.

Mr. ESCH. What is your opinion as to the necessity of the use of the water gauge?

Mr. COLE. We merely put it on as an additional precaution. We think that the gauge cocks must be relied upon for determining the height of the water, so that if it becomes a question of doubt between the water glass and the gauge cock, you take the gauge cock. The gauge cock is the court of last resort for the height of the water.

Mr. ESCH. When you have a water glass and a gauge cock near together as they are on the boiler, has it developed that the engineer would oftentimes rely on the water-gauge indication and not use the try cock?

Mr. COLE. I think that is true to a certain extent, but I am hardly in a position to answer that as definitely as some of the railroad people could. Our practice, however, is, in the absence of any other instruction, to put the three try cocks on the right-hand side, next to the engineer. That is the thing for him to look to. The water glass we put on the left-hand side, just past the center of the boiler.

Mr. ESCH. What is meant by low-water indicators?

Mr. COLE. I do not know, sir; not as applied to locomotives.

Mr. ESCH. That is the expression that is used in the bill, "low-water indicators." I wondered how that would differ from the water gauge.

Mr. COLE. I do not know just what is meant by that. To my personal knowledge, I never knew of one being applied to a locomotive engine.

Mr. ESCH. Is there any danger from explosion because of the water pipes leading from the tender to the boiler, arising out of specifications making them too small or too large, or for any other reason?

Mr. COLE. That would immediately be noticed by the engineer. They are all ample sized. The usual practice is that each side will supply the boiler.

Mr. ESCH. Independently?

Mr. COLE. Yes; and it is only in special cases that it requires both injectors to be on at the same time.

Mr. ESCH. Do all locomotive boilers have the same gauges?

Mr. COLE. Yes, invariably.

Mr. ESCH. And those are in addition to these other appliances that we have been talking about?

Mr. COLE. Yes.

Mr. ESCH. How large a factor in safety are steam gauges on locomotives?

Mr. COLE. I should say they were a necessity.

Mr. ESCH. An absolute necessity?

Mr. COLE. They are always put on. I never knew of a locomotive being operated without a steam gauge.

Mr. ESCH. Does the steam gauge give the pressure?

Mr. COLE. Yes.

Mr. ESCH. Is that the purpose of it?

Mr. COLE. Yes.

Mr. ESCH. Do you know of any explosion arising because of an insufficient steam gauge?

Mr. COLE. I do not recall one at the present time. Even if the steam gauge were defective, the safety valves would take care of the excess pressure.

Mr. ESCH. Is there such a thing as the engineers sometimes speak of, of sitting on a safety valve, and thus allowing the pressure to get beyond the safety point?

Mr. COLE. The safety valves on all modern locomotives are made spring-seated; that is, the pressure is applied to the dial by means of a spring, and nearly all locomotives have either two or three safety valves.

Mr. ESCH. And they have a weight, do they not, which is adjustable?

Mr. COLE. No, sir; it is a spring.

Mr. ESCH. Have there been any explosions arising on account of defective safety valves?

Mr. COLE. I suppose there have been some, but as a general thing the factor of safety on a locomotive boiler is so high that you can run the pressure up very much over the working pressure without endangering the boiler, and it is frequently the case that you will see boilers where the pressure will run up to 10 or 15 or even 20 pounds above the working pressure for a short period of time.

Mr. KNOWLAND. What is your experience as to the cause of boiler explosions?

Mr. COLE. They are caused mostly by low water.

Mr. KNOWLAND. Which could not be prevented by an inspection?

Mr. COLE. No; absolutely not.

Mr. KENNEDY. As to these fusible plugs, do you know of boilers on locomotives that have used those at all?

Mr. COLE. Yes, sir.

Mr. KENNEDY. How big a hole would be made in the iron when filled by a fusible plug—what would be the diameter of it?

Mr. COLE. The threaded portion that screws into the sheet would probably be an inch, but the hole through the fusible plug, through the brass plug, would usually be about three-eighths of an inch.

Mr. KENNEDY. Now, that would give a warning of low water, provided there was no scale over the space occupied by the fusible plug. What is the fact as to the character of the scale that is formed on the inside of a boiler? Is it firm and solid, occasionally?

Mr. COLE. My experience with fusible plugs showed that they often were inoperative by reason of the scale forming from the inside.

Mr. KENNEDY. That is what I wanted to call attention to.

Mr. COLE. Over the portion that is exposed to the flame in the inside of the fire box. The first thing that occurs when you screw a fusible plug in a fire box and build a fire under it is that the first portion of it will melt out.

Mr. KENNEDY. That is, the fusible metal would melt away and leave the scale covering the orifice?

Mr. COLE. This would melt, that is the first thing, until it approached the level of the water, and cooled sufficiently, and then there would be a slight deposition from the fire and the ashes, and so forth, which would form a slight scale; not from the water, but partially due to a slight seepage, and that would fill up any little opening, and I think the character of the metal also changes from the heat, so that it becomes an unreliable indication.

Mr. KNOWLAND. One of the witnesses said that he considered them a cause of danger. Do you?

Mr. COLE. They may be a cause of danger.

Mr. KENNEDY. Even if the scale was sufficient to stand the steam pressure, when the metal had melted away behind it, it would give no warning then of the fact that your boiler was overheated?

Mr. COLE. No, sir.

Mr. KENNEDY. And the engineer, relying on that, might exercise less care than he would if no fusible plug was used?

Mr. COLE. That is the idea, yes.

[At this point a model of a locomotive boiler was set up on the committee table.]

STATEMENT OF MR. JOHN PURCELL.

Mr. PURCELL. This is a model of a locomotive boiler we have been discussing for the last day or two. This is known as the shell, from this portion to here [indicating]. This is the fire box [indicating]. I should say 95 per cent of the explosions of locomotive boilers are due to the fact that the water gets below the crown sheet. The try cocks or gauge cocks are located in the back head. The engineer sitting on the right side of the engine, the try cocks are on his side [indicating] and the water glass cocks are on the left side here [indicating]. The bottom try cock and the bottom water glass cock are here [indicating], the center of which are located 4 inches above the crown sheet, so that when you have water in the bottom glass cock and the bottom try cock you have still 4 inches of water over the crown sheet, which is perfectly safe; but if your water gets below the bottom try cock, or is not shown in the water glass cock, it is the duty of the engineer then to put the fire out, because if he does not, within a short time he is going to have trouble.

The CHAIRMAN. How rapidly does the water go down when it is being turned into steam?

Mr. PURCELL. It all depends on the fire you have.

The CHAIRMAN. Well, when you have a hot fire?

Mr. PURCELL. Well, when you have a hot fire it goes down rapidly—if your engine is working hard it goes down rapidly.

The CHAIRMAN. I mean under the most strenuous conditions?

Mr. PURCELL. Four inches of water would last probably eight to ten minutes.

The CHAIRMAN. Go ahead.

Mr. PURCELL. These bolts you see here are what are known as the "stay bolts" [indicating]. When the boiler of full size is built originally, the margin of safety would be probably five to one; that is, five of those bolts could be broken with 200 pounds of pressure on, and the engine would still be safe in this space [indicating]. Those are braces that brace the back head to this side sheet or casing sheet. This is known as the "throat sheet," that couples on to the barrel here, and that is the same that Mr. Austin, of the Baldwin Locomotive Works, spoke of. That is made with several of these braces in here, so as to make it as strong as this [indicating]. There are two rows of rivets around in there [indicating]. This boiler was built for a model for instructing our school apprentices.

The CHAIRMAN. Are you a schoolboy demonstrator?

Mr. PURCELL. No, sir; I am not.

The CHAIRMAN. Because we would not be quite up to the schoolboy stage.

Mr. PURCELL. No, sir; I am not a schoolboy demonstrator, but I have started lots of schools for boys. There is the spacing they have been talking about, in there, between the flues. Now, the boiler has got to be built so the water can get between the flues. If it does not, they will simply burn out on you.

Mr. SIMS. What is the space in between the tubes?

Mr. PURCELL. All the way from five-eighths up to an inch; it depends on the location of the locomotive, in the territory in which it runs. If the water is derived from streams and reservoirs where there is an accumulation of mud, the spacing should be wider, but where you have good water it is all right to make the spaces a little closer. But I have never known a boiler to let go in its shell, and I have been in the business for twenty-two years.

Mr. KENNEDY. You have known flues to leak or burst?

Mr. PURCELL. I have known flues to collapse inside, but that has no effect.

Mr. KENNEDY. I understand that. That simply blows the steam and water that escapes out into the fire, does it not?

Mr. PURCELL. It goes out either that way or this way [indicating]. It will either go out there, or go out through the stack.

The CHAIRMAN. What I want to know is what you do when you test the boiler.

Mr. PURCELL. Do you mean the hydrostatic test?

The CHAIRMAN. Any kind of a test you make.

Mr. PURCELL. We will go to work and fill this boiler up with water and heat it up to 200°, or we will heat the water before we put it in. Then we will put a steam gauge in here and another steam gauge down here, and we will go inside and—

The CHAIRMAN. Inside where?

Mr. PURCELL. Inside of the fire box here [indicating]. We will put a man in there, and he goes in there first and he holds straight edges along the side sheet, along the crown sheet, along the flue sheet and along the back-door sheet. Then he measures it up and then we go to work and put this hydrostatic test on. Our practice is to put it 50 pounds over the working pressure. If we have 200 pounds, we will put on a pressure of 250 pounds. That is held on while this assistant gets inside and measures the sheets all around. If there is no distortion there, it is all right. Of course we take off this dome cap and get inside here [indicating] and look through all the braces from the back head here, and see that everything is all right, and in addition to that we go over all the stay bolts and test those bolts.

Mr. ESCH. How do you test the bolts?

Mr. PURCELL. With a hammer. One man is on the inside. We have a man on the inside, and he will tap that bolt with a hammer [illustrating on model], and we have men who are experts, who have been in the service a great many years, and who can detect a defective bolt with a man holding on the inside, just from the sound they get. We have men who can get a fractured bolt—that is, just half of the bolt broken—by continued testing of it. After that boiler is tested, if any of those bolts are found broken we remove them and replace them with good bolts, and then we put back the dome cap and start the engine and let her go into service.

Mr. BARTLETT. If any are broken, you replace them?

Mr. PURCELL. If they are broken; yes, sir.

Mr. SIMS. How do you examine the flues or test them?

Mr. PURCELL. We look right in and see them.

Mr. SIMS. Can you tell by sight whether they are all right?

Mr. PURCELL. All you have to do is to look in there, and if there is any leak you can tell it.

The CHAIRMAN. What was this talk about taking off the shell?

Mr. PURCELL. Taking off the lagging?

The CHAIRMAN. Well, taking off the lagging, then?

Mr. PURCELL. The lagging goes on here [indicating], and there is a jacket which goes on top of that, and when the engine goes into the shop for this inspection we take this off if it is necessary. It costs between \$25 and \$30 to take that off.

Mr. SIMS. Does it take ten hours to inspect an engine as you have indicated?

Mr. PURCELL. Yes, sir.

The CHAIRMAN. Where is the fire box?

Mr. PURCELL. This is the fire box [indicating]. The fire is here; all in here. The coal goes in here [indicating].

The CHAIRMAN. Is that space all the fire box?

Mr. PURCELL. Yes, sir.

The CHAIRMAN. Is the boiler there over it [indicating]?

Mr. PURCELL. The boiler is here over it.

The CHAIRMAN. The fire box is not in the boiler?

Mr. PURCELL. The fire box is this portion here [indicating]. That is the fire box. This is the outside or casing sheet. The water is in between—here. The water goes all around here [indicating].

The CHAIRMAN. Is all this empty space the fire box?

Mr. PURCELL. This is the fire box all around here and in through the flues and out through the stack [indicating].

Mr. SIMS. And this is the boiler here, and the water is in between here [indicating]?

Mr. PURCELL. This is the water all in between here [indicating].

The CHAIRMAN. How thick is this metal here [indicating] let of fire box?

Mr. PURCELL. From 4 to 4½ inches.

The CHAIRMAN. How thick is the metal on the outside of the boiler?

Mr. PURCELL. The outside is generally three-eighths to three-fourths; it depends on the pressure of the boiler.

The CHAIRMAN. How much space is there between here [indicating]?

Mr. PURCELL. There will be 4½ inches at this bottom here [indicating], and then it comes up here, making a bigger body on the top than on the bottom.

The CHAIRMAN. If the water should so decrease as to go down over the top of this sheet, would that be dangerous?

Mr. PURCELL. Yes; then that would melt.

The CHAIRMAN. The top of this sheet, you mean?

Mr. PURCELL. Yes; this sheet here [indicating].

The CHAIRMAN. How many inches are in that top?

Mr. PURCELL. In the ordinary engine there are 22 inches. Of course, you have to have some space for your steam.

The CHAIRMAN. You try to have all parts of the boiler that the fire strikes direct covered with water?

MR. PURCELL. Yes; they must be. And it has got to be so constructed that the height of the water is shown in those water-glass cocks.

THE CHAIRMAN. How much water is there in the boiler from the flues to the top of the water?

MR. PURCELL. About 10 inches. It decreases down at this end [indicating].

THE CHAIRMAN. And in order to be safe the water must be over this sheet?

MR. PURCELL. It has got to be over the flues. There never can be a failure at this end [indicating], because the water will always be down here.

THE CHAIRMAN. So the trouble would naturally come here before it would there [indicating]?

MR. PURCELL. Yes, sir.

MR. ESCH. Is that the safety valve [indicating]?

MR. PURCELL. That is where the safety valve would be. Generally in all locomotives of modern type there are three of them that have an area of 5 square inches, which will relieve the pressure faster than it can be put on. That will make 15 inches, altogether. I never heard of an engine going up except by a burned crown sheet, and that is something that the railroad companies have no control over.

STATEMENT OF MR. A. E. BROWN, GENERAL FOREMAN AND BOILER MAKER OF THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY, LOUISVILLE, KY.

MR. BROWN. Referring to the subject of boiler inspection and explosions, it is my opinion that the company that I represent has taken decidedly good care of its engines, and does so perpetually; it not only inspects them every ninety days, but exercises a perpetual care and caution against any defects that may arise locally in a locomotive before leaving a terminal.

As far as gauge cocks, water glasses, and soft plugs are concerned, I believe also that they create confusion. A man invariably depends on one of these things to tell him where the water stands in his boiler; principally he depends on the water glass. Engineers will neglect their gauge cocks and depend also on soft plugs, where they have them. The Louisiana and Northwest Railroad Company do not use them, and I have no testimony to offer any more than my opinion as a practical man in the business. I say that it would create confusion to depend on the water glass to show the condition of water in the boiler. We build boilers at Louisville and we repair them in every stage. Our manner and form of inspection I do not believe could be improved upon by any inspector other than the producer. Our boilers, some of them are built at the locomotive works, and we build a great many ourselves. So far as the material is concerned, it is inspected at the locomotive works where the locomotive works builds and furnishes the engine, and a record of that is kept in the office of the superintendent of machinery. Likewise the material that we use for building the boilers at our plant for our use I take a record of, as to the heat and sheet numbers and also the tensile strength and also the maker's name, and I enter that in a personal

record of my own. I give copies of these records to the master mechanic for his observation.

Now, as to the qualifications of an inspector, I note here in section 3 of this bill, H. R. 10889, on page 4, beginning with line 18, this language:

That the inspector of locomotive steam boilers shall be a person who has been a practical boiler maker of at least five years' experience in the construction and repair of locomotive steam boilers or who has had at least five years' experience as a locomotive engineer in actual road service.

Mr. Chairman and gentlemen, five years is not sufficient time for the practical boiler maker. I would pronounce that part of this bill almost atrocious, in a sense. You must bear in mind that to make a boiler maker from a rivet boy or an apprentice it takes five years. Then he would not be eligible as an inspector. That is practically four years and a half at the steadiest, at his work, nothing detaining him from it; about four and a half years. There are but few of them who get through their apprenticeship in that time.

As for a locomotive engineer, I do not believe he would ever mature for the profession; I say that without prejudice or partiality. When it comes to inspection, it deserves the true attention of a practical man, a man to get down into the weaknesses and also to study the stress, to observe the tests and pronounce a judgment. So far as these hydrostatic tests of old work go, that is of as much importance as, or I would say of more importance than, the new work; there are more likely to be ruptures left. However, this class of work in my honest opinion would take a good man of the profession; it requires a good man to pronounce a judgment on one of those boilers. Therefore I claim that neither a boiler maker of five years' experience nor an engineer in a lifetime would mature to a boiler inspector. I do not believe that his judgment would be good enough. I am giving you this as the result of practical experience in my profession for thirty-four years, seven years of that time in a local apprenticeship, and twenty-seven years as a journeyman and overseer.

There is another part of this bill that I have failed to comprehend the meaning of. This is on page 2, section 1, and I will read commencing on line 17:

low-water gauges, means of moving mud and sediment from boiler, and all other machinery and appurtenances thereof are of such construction, shape, condition, arrangement, and material that the same may be safely employed in the active service of such carrier in moving such traffic without peril to life or limb.

Gentlemen, I can not fathom that sentence. I do not know what it means. I have read it over and I have tried to see what would possibly present itself.

The CHAIRMAN. What do you think it means?

Mr. BROWN. I have not an idea what it means. I do not believe it means anything pertaining to the safety of a locomotive. I do not speak of the mud and sediment in the boiler; that is always subject to be removed at every possible time. I mean from that part on. I just started up there to get a key into it. I do not understand what that means, this part of this bill.

I believe that is all I have to say on this subject.

The CHAIRMAN. All right. Who is the next witness?

STATEMENT OF MR. D. R. M'BANE, ASSISTANT SUPERINTENDENT OF MOTIVE POWER, NEW YORK CENTRAL RAILROAD.

Mr. MCBANE. Mr. Chairman and gentlemen, I have given the proposed bill a considerable amount of thought, and I have listened to the arguments that have been advanced by the different gentlemen who have preceded me, and have come to the conclusion that it will not be necessary for me to have but a few moments of your time to say what I feel is necessary to be said. Mr. Crawford and the other gentlemen, Mr. Curtis and the others, who have handled the matter, have taken such ample care of the technical part of the subject that I feel that it will be entirely unnecessary for me to touch on that. I will confine my remarks to a comparison of the proposed inspection and what is now in vogue on the railroads that I am familiar with: The practice of inspecting locomotive boilers on the New York Central I will use as an example, and the New York Central lines as a whole would come under that head. We have a set of rules that apply to this, and every locomotive boiler while in service must have a regular thorough inspection once every thirty days for the location and elimination of broken stay bolts or anything of that kind that might affect the soundness of the fire box. That inspection is carried out by schedule. We do not wait for someone to bring in a report that an engine is defective. The engine is looked after and it is inspected at the expiration of the time or before it gets beyond the proper time. That is the monthly inspection of stay bolts, purely a railroad company's affair.

The longest time that we can run a locomotive in the State of New York between washings out is thirty days; that is, by the state law. There are very few of our locomotives that we do run for thirty days without washing out. Three-fourths of our locomotives receive washouts every ten to twenty days. Those that we leave for thirty days are engines that are doing work in proportion; that is, it will require thirty days for that class of a locomotive to evaporate as much water as one of these passenger engines is doing, for instance, in ten days. Hence that time for washing out. That is purely a railroad company's proposition. At each one of these washouts the boiler gets another stay-bolt examination. A competent man is put into the fire box, and if any defective stay bolts are found, they are remedied before the engine is put back into service again. Those are the rules of the railroad company. In addition to that, every trip that the locomotive makes, when the fire is dumped out and the engine comes in, there is a competent man goes in the fire box and inspects for any defect. If he finds a rivet head leaking, he calks that. Half a dozen places may have started to leak and the water may be running down the sheet. Those places are all calked up. This is another form of inspection of the railroad company.

In addition to all this the locomotive engineer who brings an engine in must fill out a form of criticism of the condition of the engine. If he does not fill that out and anything seriously wrong is discovered by the inspectors of the company in the engine house, the man is subject to discipline. That is the company's arrangement.

Contrast that, gentlemen, with the proposed scheme. The man who makes an examination of the stay bolts in the fire box and determines whether any of them are broken is a boiler maker, and we find that in the ranks of the boiler makers we have about 15 per cent or less of men who are capable of going into the fire box and determining by the hammer test whether or not a stay bolt is broken.

Mr. ESCH. Is there any other test?

Mr. MCBANE. There is no other test that I know of excepting the indicator test by the drill in the stay bolt.

The hammer test is the only reliable test from our point of view, for the reason that in limestone districts—that is, in districts where there is

considerable lime in the water—the fracture of stay bolts drilled with a telltale hole is progressive, as it were. It is probably progressing at the rate of a thousandth of an inch, a little at a time, according to a certain movement of the fire box. Hence the breakage through in the telltale hole at first is very, very small, and immediately with the breaking through into the telltale hole the lime begins to seep through, and if the progress of the break is slow the probabilities are that the telltale hole will be filled with the lime before the bolt breaks off, and for that reason the telltale hole is not a reliable means of detecting broken stay bolts.

In speaking of the proposed inspection I wish to contrast that with what we know is in existence. We will assume that there is a good boiler maker, a company's man, and he comes around to our locomotive and says, "I want to inspect that engine, 29." We stop No. 29, and he goes over it. Now, the only way that I can construe the intent of this bill is that that man is to walk around and make a superficial examination of the boiler. He may see a little steam leaking out from under the jacket on one side; it may be a perfectly sound boiler, and one stay bolt may be leaking. My idea is that that man would have a right to stop that engine on that. I do not think it is anticipated by the framers of the bill that that man is to go inside of the fire box and apply the hammer test and decide whether or not the engine is in safe condition. If it is intended that he should do that, to get a fair idea of the number of men that would be required to carry out the boiler examination alone, I may say that on the New York Central Railroad we have seventy inspectors constantly taking care of boiler inspection. We have 1,956 locomotives.

Mr. PAULDING. That is in the State of New York.

Mr. McBANE. That is in the State of New York. We have more, perhaps, than would be necessary if we could have all locomotives waiting for the inspectors; but we could not do that; that would be a bad commercial proposition. Commerce would be tied up if all railroads did that kind of thing. What we have got to do is to have the inspectors waiting for the boilers, so that when an engine comes in and it is due for inspection, there are inspectors there night or day to get onto the job and complete it as quickly as possible. Our inspection, together with the boiler inspection, is of a double character. For instance, the quarterly inspection includes thorough inspection of the boiler, fire box, and so forth, together with removal of the gauge cocks, try cocks, water glass and stop cocks, and a testing and readjustment of the safety valves as well. Now, we have the boiler inspector doing the boiler inspection inside, and we have another man taking care of the steam gauges and still another man looking after the water glass cocks and gauge cocks, making three men engaged in that inspection, and with the man who seats these valves and resets those, making three inspections, and we try to have the work go along all at once, and shorten the time on the engine as much as possible. That illustrates what a quarterly inspection means.

Mr. TOWNSEND. How long does it take them to do that?

Mr. McBANE. That is a fourteen or fifteen hour job.

Mr. TOWNSEND. For 4 men?

Mr. McBANE. Yes, sir; well, of course that would have to be qualified. There would probably be four or five engines to go out in that

time. There are so many engines to examine every day that they are like a passing show; they complete one engine and that is turned out, and then there is another one completed and turned out; but for one engine, between the time it went in and the time it got out it would be twelve to fourteen hours. The completing of the engines is regular. We complete one probably every two hours throughout the twenty-four hours of the day at the big engine houses.

Speaking now of the capacity and capabilities of men to make the inspections of locomotives, I take it, as I said before, for granted that nothing more was intended than a superficial examination of the boiler, and a superficial examination of a locomotive boiler would be absolutely useless. It is entirely different from the duties of an interstate commerce inspector, who sees everything. It is a matter of seeing everything and knowing what ought to be there to see. With this locomotive boiler proposition it is a different thing. The inspector has got to be a man who feels, in the boiler proposition, and there are very few men, even among the boilermakers, who are capable and have that sense of feeling that qualifies them for safe stay-bolt inspectors. A locomotive engineer for such a position is simply out of the question, and would be a farce, pure and simple. I was a locomotive engineer, and I have been thirty-four years in the business. I spent five years as a fireman, eight years as a locomotive engineer, ten years as road foreman of engineers, and I do not hesitate to say that I would not consider myself a capable man to go into the fire box and make an inspection for broken stay bolts.

The CHAIRMAN. Why do you assume that this bill contemplates only a superficial inspection?

Mr. McBANE. I assume that for the reason that it does not seem to me that the Government could conduct the inspection as thoroughly as we conduct it without having as many men as we have, and from the way the bill reads.

The CHAIRMAN. I asked because some of the witnesses who have been before us assumed that it meant a hydrostatic test four times a year.

Mr. McBANE. Sir?

The CHAIRMAN. I say some of the gentlemen who have testified assumed that it meant a hydrostatic test four times a year. You assume that it simply means looking at the engine. I wanted to know why.

Mr. McBANE. I must confess that is what I think it would be.

The CHAIRMAN. I am not questioning that; but why?

Mr. McBANE. For the reason that it is too vague and indefinite. It assigns to a boiler maker or a locomotive engineer more than any one human being is capable of carrying out and doing. A man would have to be a chemist, a designing engineer, and a member of several other professions and trades all tied up together in order to qualify for the position here. We know that that is not true, and we do not think that it is intended that he should have all these qualifications, and therefore I say it seems to me that the examination can only be intended to be a superficial affair, simply to allow some one to come around and say, "That engine is leaking; stop her."

The CHAIRMAN. It says that the secretary shall cause a careful inspection of each boiler and the appurtenances thereof. Do you think that means a superficial test?

Mr. McBANE. Yes, sir; it can not be any other than a superficial test, unless you go through the programme I have outlined.

The CHAIRMAN. There is nothing in here that says what programme you shall go through.

Mr. McBANE. Sir?

The CHAIRMAN. I have not noticed anything in the bill which stated what programme the inspector or inspectors should go through.

Mr. BARTLETT. Yes; the bill says that a boiler shall withstand a hydrostatic test, and that the boiler and appurtenances shall be well made, of good and suitable material, and the pipes and tubes exposed to heat shall be of proper dimensions and free from obstructions, and that the spaces between and around the flues shall be sufficient, and so forth.

The CHAIRMAN. I am not denying that you may be right. I just wanted to get the reasons that made you think so differently from some of the other witnesses.

Mr. BARTLETT. It is a little general. It says, after prescribing all these various things, "that the same may be safely employed in the active service of such carrier in moving such traffic without peril to life or limb." That is at the end of section 1.

Mr. McBANE. I think that was a case where they were trying to include too many things in one breath.

Mr. KENNEDY. How many men would it require on your road to make a thorough inspection of a boiler?

Mr. McBANE. We have for our 1,956 locomotives approximately 70 boiler inspectors actually engaged in doing the work of inspection.

Mr. KENNEDY. Are you able to state about how many, on all the roads of the United States, it would require to make quarterly boiler inspections? You inspect oftener than quarterly?

Mr. McBANE. Yes, sir.

Mr. KENNEDY. Can you give us any idea how many officials that would require in the government service, to inspect quarterly all the boilers in the United States; just approximately?

Mr. McBANE. At that same ratio, and we believe it would have to be as great a ratio away from New York State as in New York State. We have 70 inspectors for 1,950 locomotives. There are 56,000 locomotives in the United States, I believe. Is that the figure?

Mr. ESCH. There are 60,000 now.

The CHAIRMAN. You figure one inspector for about 30 locomotives, or a little less than 30 locomotives, on your road?

Mr. McBANE. Yes, that is about right. We do not believe that we have any more men than are necessary, and to be frank and fair in this matter, we are worrying because we do not believe we have as many as we should have. That is, we have men enough, but we have not got a sufficient number that are expert with the hammer. That is one thing we are working on now. We have schools around on the road to educate our boiler makers.

The CHAIRMAN. Mr. McBane, if you want more men that are familiar with the hammer, I can recommend some around the table, here. [Laughter.]

Do you draw the inference that those government inspections that would be made by the officials would have to be made by boilermakers

who had not more than four years of service or by engineers who had not had more than five years' experience?

Mr. McBANE. Yes, sir.

The CHAIRMAN. Is that the reason you thought it would have to be a superficial inspection?

Mr. McBANE. Yes.

The CHAIRMAN. And that men who had that experience would not have the experience to make such an inspection as would determine defects in a boiler?

Mr. McBANE. Yes, sir; a locomotive engineer would not have it once in a thousand times. Not once in a thousand times would a locomotive engineer be capable of going into the fire box. The boilermakers might average pretty well on that. Among our boilermakers now the percentage of those who can go in the fire box is about 15 per cent on the New York Central, and I assume it would average about the same there.

Mr. TOWNSEND. Do you know whether any of the roads other than the New York Central make their inspections through the locomotive engineers?

Mr. McBANE. None of them; no, sir.

Mr. TOWNSEND. They all have special men for that service?

Mr. McBANE. Yes.

Mr. ESCH. What do they pay them, on the average?

Mr. McBANE. The inspectors?

Mr. ESCH. Yes.

Mr. McBANE. Probably \$95 to \$100 a month. He is just a first-class journeyman boilermaker, and that would be about what he would make as a boilermaker. He is paid on a day basis, as a rule.

In addition to these inspectors, we have three or four traveling experts who travel all over the district and drop in at various times and check up the local inspector as to how many he has missed or how many he has marked that were not broken, etc., on the stay-bolt examination. The supervisor of boilers has those men and directs the movements of those men from time to time. In my experience, in my association with the Michigan Central and the New York Central railroads, we have had a great many of the so-called fire-box explosions. There has never been a shell explosion on the Michigan Central in Michigan in years past that I know of. On the New York Central I can not say further back than two years. We have, however, had a considerable number of fire-box explosions. Every case in my twenty-five years' experience with the Michigan Central Railroad, and so far in my experience with the New York Central, notwithstanding that I would like to favor my fellow-men with as good an opinion as possible—and especially the locomotive engineers, as I am a member of their institution—I must say we have never had an accident of that kind that could not be directly traced to low water in the boiler. All the fire-box explosions that we have had have been the direct result of the engineer burning the boiler, burning the crown sheet.

Speaking of the water glass as a safety appliance, I have directly opposite views. Notwithstanding that for the last twenty-five years I have had nothing to do with engines that had not water glasses and gauge cocks, I have run an engine without a water glass on it. The water glass is in no sense a safety measure. On the other hand, it

tends to make the engineer careless. He relies on the water glass three hundred days of the year. It has never failed him. On the three hundred and first day of the year it frequently happens that an accident happens as a result of the water glass being out of whack on that day. I know from personal experience that that is a fact. I have followed out dozens of cases where boilers have been burnt, and in nearly every instance have found that the cause of the burning was a false registering of the water in the water glass, and these false registers of the water in the water glass are brought about in different ways. For instance, if any little obstruction comes in the bottom cock—that is, in the channel between the boiler and the glass—that will interfere with the passage of the water from the glass to the boiler or the passage of the water from the boiler to the glass—and the water ought to pass freely so that the same levels might be obtained—that will make the water glass work sluggishly, and that will very likely attract the engineer's attention because, if the engine is running the water will have a motion that will indicate to him that the water is working all right from the bottom cock. Very few engineers get caught in that way to-day, because the engineer will notice that there is something wrong, and he will blow out the water glass or try the gauge cocks, and try to decide for himself in some other way. The time that the engineer gets in trouble on the water glass is when something is interfering with the free flow of the steam between the boiler and the water glass. That free flow of the steam may be interfered with by the crushing of the little lead gasket that is used to make the connection with the pipe. That may be screwed up time after time when they put in new water glasses until, finally, the hole in that lead gasket is nearly closed, and that may result in a depreciation of the pressure by an ounce or perhaps two ounces, and that will, in every instance, cause a false registering in the glass of from two to four inches. The engineer watches the glass and he thinks he has four inches of water over his crown sheet. He has been relying on the glass and he has no doubt it is going to be all right this trip as on all others. The first thing he knows the water in his boiler has receded, because the injector was not putting in quite enough, to the point where the top of the crown sheet is exposed, and an accident of greater or lesser magnitude occurs.

Mr. SIMS. Who appoints the inspectors for your company?

Mr. McBANE. That is usually handled by the master mechanic in charge.

Mr. SIMS. Does the appointing party or person have to have the qualifications necessary to make the inspection in order to judge of who is qualified to make it?

Mr. McBANE. No, sir.

Mr. SIMS. The difficulty that presents itself to me is, if we pass this law, who will be the appointing authority? Who is qualified to pass on the inspectors?

Mr. BARTLETT. We will have a civil-service examination for it.

Mr. SIMS. I want an answer from the gentleman on that.

Mr. McBANE. A railroad organization is an organization of specialists along different lines, beginning at the president. He is usually the financial proposition. The general manager is a general man who has an eye over all things. It is not likely that he is an expert in all things, but he is capable of surrounding himself with experts for all

things. The tree comes down the same way. The master mechanic in charge of a division point may not be capable of determining whether a boiler is sound, by the hammer test, but he has confidence in his next subordinate officer, and he puts the job up to him, and that man selects the men. So you take the foreman boiler maker, and the man under him, the master mechanic, will be able to go into the fire box and try his pupil, and he will know before he appoints him that he is capable.

Mr. SIMS. As a practical matter could the government agents or officers—the Secretary of the Department of Commerce and Labor or whoever has the appointing of these inspectors—select them properly, and is he possessed of that knowledge necessary to appoint others who are qualified, as the operating officer of a railroad himself would be?

Mr. McBANE. The operating officer of the road it is not likely would be competent to pass on such a case. He would hand it over to his subordinate.

Mr. NEALE. He asked you if the Secretary of Commerce and Labor would be competent to select these men.

Mr. McBANE. Certainly not, unless he was an artisan.

The CHAIRMAN. The president of the road, who was not an artist, could secure the appointment of proper men, but the Secretary of the Department, who was not an artist, could not?

Mr. McBANE. No; I said an "artisan."

The CHAIRMAN: Well, an "artisan," then; substitute the word "artisan" and what I said is equally applicable. You are not familiar with the method of making government appointments, I presume?

Mr. McBANE. No; I am not familiar with it.

Mr. BARTLETT. Very few people are familiar with it.

Mr. KENNEDY. Before you leave the subject of the water glass, I want to ask one or two more questions. I suppose an engineer whose engine has exploded rarely admits that the water gauge showed no water?

Mr. McBANE. We have had, in my experience, two cases where the engineer came in and said, "Well, she got away from me; I burnt this engine and I am here to take my medicine."

Mr. KENNEDY. Two cases where he confessed it. But you would rather expect that they would claim that the water gauge indicated water over the crown-sheet?

Mr. McBANE. Yes, sir.

Mr. KENNEDY. Now, you can not tell in how many cases the man is simply trying to clear his own skirts? It is a pretty difficult matter to know whether the water gauge was at fault!

Mr. McBANE. It is difficult. You can usually determine after the explosion occurs.

Mr. KENNEDY. That is what I wanted to direct your attention to. Can you tell after the explosion occurs?

Mr. McBANE. Yes, sir.

Mr. KENNEDY. Where the water stood when it did occur?

Mr. McBANE. No, you can not tell that, excepting by the line to which the water has receded in the boiler.

Mr. KENNEDY. You can usually tell that the water did get below the crown sheet before the explosion occurred?

Mr. McBANE. Yes, sir.

Mr. KENNEDY. But how would you be able to tell and ascertain for certain that the water gauge spoke the truth at the time?

Mr. McBANE. You can never decide positively. You might, in examining the water-glass appliances, find such a case as I have described, where one of those gaskets was squeezed in. The top cock may have been closed off so that the opening to the top of the glass was very little. If there is very little pressure, the movement of the glass would be the same as if the glass were open, which would not be so if the bottom of the water glass was closed up. It might be that the engineer in all these cases was deceived, and that is the reason they come in and say "I had her full of water." There have been only two cases in my experience where the man came in and confessed that he burnt the boiler. There is no true and reliable method of determining the water level in the engine boiler excepting by the gauge cock. The engineer in making a trip over the road will probably doubt the water glass and try his gauge cocks, in one-two-three order, half a dozen times. He never uses the water glass as a check on the gauge cocks, but he uses the gauge cocks as a check on the water glass.

Mr. SIMS. Do all your inspectors come from among the boiler makers?

Mr. McBANE. All boiler inspectors; yes, sir.

Mr. SIMS. If that is true, do you not regard the knowledge of a boiler maker as being absolutely necessary for an inspector?

Mr. McBANE. Yes, sir.

Mr. SIMS. Now, I want to ask you, how could any government official appoint inspectors of boilers unless he did have, himself, that knowledge, or could avail himself of the knowledge of some person who had the information?

Mr. McBANE. I will answer that the best I can. He would not attempt to appoint these men. He would add to his staff some man of known ability like Mr. Brown, or somebody else, who was a known strong man in the boiler field. He would manage the matter in that way.

Mr. SIMS. The Secretary of Commerce and Labor would appoint an assistant, and he would appoint these men?

Mr. McBANE. Yes, sir; that is the way he would do it.

Mr. SIMS. The bill does not prescribe any method, but it does describe the qualifications that the men must have, and what I want to know is who would have the selection of these inspectors under this bill?

Mr. McBANE. I can not say anything more than I have said—that the Secretary of Commerce and Labor probably would add to his staff a man who was capable of selecting the men.

In respect to the number of inspectors that would probably be required to carry out this law as it is intended or proposed, in the State of New York there are engaged in the inspections of locomotive boilers some 550 inspectors. That is in the State of New York, inspecting boilers.

Mr. BARTLETT. Locomotive boilers?

Mr. McBANE. Locomotive boilers; yes, sir. That covers some 6,800 locomotives, I think. That would probably give a little better idea of what it would mean for the whole country, if the inspection pro-

posed by the new law was to be in any degree as effectual as the one that is now being carried out.

Mr. BARTLETT. How are those inspectors appointed?

Mr. McBANE. Those are the inspectors of the railroad companies.

Mr. ESCH. They have no state inspectors of railroads?

Mr. McBANE. We have certain laws in the State of New York that we have to observe. We have to report to the public commission all of our washouts and stay-bolt examinations, and they check to see that we do that.

The CHAIRMAN. I did not hear what you said.

Mr. McBANE. I say we have to report to the public-service commission of the State of New York our washouts, inspections, and all that sort of thing. We have to fill out a blank and send it in. They have two inspectors of trains that check our records to see if we are washing out as frequently and testing stay bolts as frequently as we ought to, and carrying out the other parts of our inspections; but as I explained in the beginning, our requirements are nearly three times as exacting as those of the law.

The CHAIRMAN. How long has that law been in force in New York?

Mr. McBANE. Since August, 1907.

The CHAIRMAN. Was there a considerable increase in the number of inspections on the railroads when that law went into effect?

Mr. McBANE. I could not say, except as to the road I am on, and I do not think there has been any increase except as there has been a change in the character and number of locomotives. The character of the locomotive has improved for the past three years on the New York Central road, as with other roads. We have a very much less number of the little antiquated engines and a much larger number of new up-to-date locomotives.

The CHAIRMAN. How many new locomotives have you acquired since 1907?

Mr. McBANE. I could not tell you.

The CHAIRMAN. We have been hearing from railroad officials since that time that they were unable to purchase new equipment.

Mr. McBANE. We purchased most of them before 1907.

The CHAIRMAN. This law went into effect in 1907, I understood you to say?

Mr. McBANE. Yes, sir; those engines were delivered along in 1907; I can not say just what time. We probably had in 1907, 1908, and 1909, on the New York Central road 250 new locomotives or more. That would be just a guess. I could not give you the exact number without getting the figures from the office.

The CHAIRMAN. And those more complicated locomotives require more inspectors?

Mr. McBANE. They are complicated in a sense, yes; they are more improved locomotives. They are very much larger and have higher pressure than the old locomotives, a greater number of flues and stay bolts, and there is a proportional increase in the responsibility attached to the care of such an engine. I believe we have had an increase of boilermakers about in proportion to the increase in the improvements of our motive power in that time.

The CHAIRMAN. Do you mean an increase in the number of boiler inspectors or of boilermakers?

Mr. McBANE. Of boiler inspectors. Of course one goes with the other; the bill of repairs increases in about the same ratio as the necessity for inspection.

The CHAIRMAN. You said an increase in the number of boilermakers. I asked you whether you meant inspectors.

Mr. McBANE. Yes, sir.

The CHAIRMAN. I think that is all.

STATEMENT OF MR. A. E. MANCHESTER, SUPERINTENDENT OF MOTIVE POWER, CHICAGO, MILWAUKEE AND ST. PAUL RAILROAD COMPANY.

Mr. MANCHESTER. Mr. Chairman and gentlemen, the inference in this bill, as I understand it, is that there has been a laxity on the part of either all or a part of the railroad companies of this country in the attention to and the care and inspection of locomotives, and that in consequence thereof there have been serious losses in life, and maiming of and injury to persons, employees or others, and that consequently it would be right and proper that the Congress of the United States should pass a law that the Government should take over the inspection of locomotive boilers. I am a member of Mr. Curtis's committee appointed by the Railway Master Mechanics' Association to look into what had been the cause of these accidents, and how many accidents from boiler explosions had occurred in this country, and the result of our investigation to date is shown in the papers which have already been filed with the committee. I will for a few moments refer to what has actually taken place on the Chicago, Milwaukee and St. Paul Railway in this line. I might add that I have been constantly in the service of the Chicago, Milwaukee and St. Paul Railway for forty-five years, and for at least a part of that time I was very close to the firing line, or I was right up either among them or had direct supervision of those who were doing the inspection, and the immediate maintenance of the locomotives.

In reviewing what has happened with us, I find that there has been but one case in twenty-five years of a boiler-shell explosion, and that was due to a head-on collision. The boiler on one of the engines in that head-on collision exploded. The circumstances were that the boiler stood upon the frog of the switch, and a larger engine struck it in such a way as to open the side of the boiler, and the sheets spread out and made a complete boiler explosion. But I am not surprised at all at there being a general feeling, a general understanding, that there are lots of boiler explosions. I am inclined to believe that the railroad men are just as much responsible for that impression prevailing as anybody else. We ourselves, officers of the railroads, talk about these blown-down crown sheets as boiler explosions—are very liable to, among ourselves. In the last five years, which covers the period of the investigation made by Mr. Curtis's committee, I find that on the Milwaukee Railroad we have had four cases of the blowing down of crown sheets in which employees were killed and injured. Every one of those cases was a distinct and readily discerned case of low water. In the same period we have had 58 cases of crown sheets injured by low water, but they did not get the crown sheet quite so hot. They did not go so far in all of

the cases as to cause a direct explosion. So that in the others, the remaining number of 58 over and above the 4 already recited, there was no injury to persons.

The question has been referred to as to why our engineers allow the water to get too low, and there have been several explanations. Some of them no doubt were correct, but they did not cover all of the explanations, as I have had them. Some years ago, due to the fact that we found in our investigations of these low-water cases that some of our most experienced and most reliable engineers were getting caught once in a while — perhaps one out of three of our best men would get caught once in a lifetime—the thought occurred to us, was it good policy to follow out the plan or policy that was then in vogue of discharging those men who were caught in that way. Our rule was that if a man once allowed the water in his boiler to get low, so far as employment with that company was concerned he had no hereafter; he was discharged, and that was the end of it. We withdrew that policy from our management and took this position, that if the engineer would come to us and tell us in a way that it was reasonably apparent that he was telling us the truth, just how this happened, or his version of how it happened, and there was some reason in that, we would return that man to service without loss of time, making a record against him, and that the second offense would mean dismissal from the service.

Since we adopted that policy I have had a different explanation in several cases, and to-day I am of the opinion that pretty nearly half, if not quite half, of all these low-water failures are due to the men taking undue chances. For example, an engineer has a meeting point with an important train, or he is running ahead of an important train. The engine, perhaps, is not steaming just as well as it ought to to make just as quick time as he would like to make. He eases off on the injector; that is, he does not put as much water into that boiler as the boiler is using, depending on the level of the water following slowly, improving the steaming of the engine so that she will make faster time to make this meeting point, so that she may make faster time to get in on a siding, or so that she may make faster time to get out of the way of that important train. As has already been explained, the distance between the bottom sheet and the crown sheet is 3 inches, and the same on the water glass, so that when that water goes out of sight, so that that engineer has nothing to show him just where his water is, he relies on the fact that he has 3 inches of water left, and that as long as he has got half an inch he is safe. Now, he tries to accomplish his purpose before he uses up the water, and I venture to say—I think I am right, I am pretty sure that I am—that he does that thing twenty or thirty times successfully, but finally he gets caught, and a burnt crown sheet is the result.

Mr. TOWNSEND. It is a part of the policy of your road, is it not, to make the best time possible?

Mr. MANCHESTER. Yes, sir.

Mr. TOWNSEND. Do you reprimand a man on any occasion for stopping to take water when he could go on and take that meeting point you speak of?

Mr. MANCHESTER. Why, yes and no. Now, if a man had carelessly put himself in that position of getting right in the way of an

important train while he was stopping to take water, when he might have done that at the next station ahead or the next station back, where he could have done it without delaying any of these important trains, he would probably be censured for it.

Mr. TOWNSEND. So that the company is somewhat to blame for this, is it not, in some respects, demanding fast time?

Mr. MANCHESTER. Why, the company and the public and the Government, yes. If we do not get our mails through on about a certain time we get fined, and if we do not get our people there, and if we do not get what we are transporting there, on or about a certain time, we lose our business; so that I do not know whether the company or the public is the fellow that is really to blame.

Mr. TOWNSEND. The engineer stands between the devil and the deep sea on that proposition?

Mr. MANCHESTER. The engineer and the railroad company, between them, yes.

Mr. ESCH. Since you have changed your policy as to getting reports from the engineers, have you had more or less collapsed fire boxes?

Mr. MANCHESTER. There has been no difference; practically no difference. The ratio has remained just about the same. It showed that men took chances when they were taking the chance of losing their job. They did take the chance, and in fact I believe that good railroad men will agree with me that a man who is too very cautious in all of his transactions is not considered by the operating officials as a real high-grade man.

The CHAIRMAN. You do not always expressly follow the letter of the rule, I take it, any more than we expect people to always follow the letter of the law?

Mr. MANCHESTER. I would say yes; it is quite possible that if a man made a real successful trip and did violate some little rule, and nobody knew it, they would not be trying to find it out.

Mr. BARTLETT. It is only when they get into trouble.

Mr. MANCHESTER. Yes; it is like the boy who stole, and his father was whipping him for it; he was whipping him not because he stole, but because he got caught at it.

Mr. KENNEDY. No sort of inspection would prevent these collapsed crown sheets?

Mr. MANCHESTER. No, sir; the occurrence of these low-water conditions could not be prevented by any inspection. Had an inspection been made one hour prior to the engine getting into this condition, it would have happened just the same. It is a man lapse, it is a man failure, and the man who fails is the man who is at that time immediately in charge of the operation of that locomotive.

The CHAIRMAN. Do you not think it is a little faulty in the designing of such boilers to depend upon the man always doing just right?

Mr. MANCHESTER. I do not know. Perhaps I do not quite get at your idea. I will make an answer, and if I do not answer your question, you can come after me again.

When I went to look especially into this question for the purpose of the committee work that we were then on the thought occurred to me that possibly there was some type of locomotive—

(NOTE.—At this point, there being a roll call, the committee took an informal recess for a few moments.)

Mr. MANCHESTER (continuing after the reassembling of the committee). Do you remember what your question was, Mr. Chairman?

The CHAIRMAN. Go ahead; never mind that.

Mr. MANCHESTER. There are other questions contemplated in the bill that constitute boiler failures, such as rupture of the flues, arch flues, and so forth, that constitute the greater bulk of boiler mishaps.

We had one case on the Milwaukee road of an indirect killing of a man by the bursting of an arch tube. The arch failed, the man became scared and jumped off the engine while in motion and was killed.

Of all of our arch tube failures I found not one that in my judgment would have been prevented by an inspection.

The CHAIRMAN. What is the arch tube?

Mr. MANCHESTER. That is a tube that carries the brick arch. It is not universally used; but I think perhaps half of the engines in the country use it. In one case the arch tube came out at the lower end of the sheet due to improper application by the boiler man. He had expanded the tube properly, but he had failed to calk over the inside end that goes in the water space where it can not be seen.

Mr. TOWNSEND. In your water space by the fire box does sediment sometimes collect?

Mr. MANCHESTER. Yes, sir.

Mr. TOWNSEND. How do you get that out?

Mr. MANCHESTER. There are wash-out plugs. This model here represents plugs at each one of these corners that are removed. Here are plugs here [indicating].

Mr. TOWNSEND. How often is that done?

Mr. MANCHESTER. That varies in accordance with the water conditions. We have portions of our railroad where the engine runs 2,000 miles, or fifteen days, without a boiler washing. We have other places where they have to be washed every 200 miles, or every second day.

Mr. TOWNSEND. With a collection of sediment, without washing it out, might that result in an explosion?

Mr. MANCHESTER. It would burn the sheet and start buckling.

Mr. TOWNSEND. Have you had any instances of that kind?

Mr. MANCHESTER. Yes; some cases of that; but never had a ruptured sheet on account of it. And in the tube failures—and that is the great bulk of all the failures in boilers, leaky flues—I find that in the last year we have had ten cases of what might be termed ruptured flues. A part of these were from pitting. In two cases the safe end came off, and another two the flue had been cracked at the inside end on the flue sheet by the use of an expander.

Now, with reference to flues, the life of a flue, the service we can expect to get out of a flue is anywhere from five to ten years; but each time the flue is removed from the boiler each end of the tube for about 2 or 3 inches is destroyed, so that the tube is that much too short for the boiler at the time it is taken out. Consequently we weld on a safe end to that tube and we continue the tube in service. It is rattled and cleaned every time it is taken out, and it is pieced out, and then is continued in service until the weight of the tube is reduced to a point that it is decided it must be scrapped. The reduction is

caused by the sand-blast action of the cinders passing through the tube.

Mr. TOWNSEND. How could a man who was not familiar with the history of that boiler, a government inspector we will say, know how thin that tube was?

Mr. MANCHESTER. He could not.

Mr. KENNEDY. Does the leaking or breaking of tubes occasion any serious difficulty usually?

Mr. MANCHESTER. Only an economic difficulty. It puts the engine in condition so she does not steam well; she burns more fuel; she does not perform her duties as well when the flues are leaking. Consequently it is an economic proposition that those flues must be fixed.

Mr. KENNEDY. The escaping steam from such a tube, in such a case as that, seldom goes back through the fire box and hurts anybody in the engine?

Mr. MANCHESTER. Oh, never; it simply leaks.

Mr. KENNEDY. It stops the efficiency of your engine?

Mr. MANCHESTER. It stops the efficiency of the engine; yes. Those things occur often. I presume in any reasonably large roundhouse there is not a day goes by that there are not one or more engines coming in with leaky flues, probably from a few in number to a good many in number.

Mr. STAFFORD. What is done with the locomotive when it is in that condition; is it taken immediately out of service, or is it continued? I mean taking a case when there is not very serious leakage experienced?

Mr. MANCHESTER. Ordinarily the boiler maker expands and calks those flues, and they are good again for several weeks or months before they will show signs of weakness again; and that performance may take place several times before the flue gets light and the bead small and weak. What an inspector discovers on a flue is that the bead is getting bad; that is all that he can tell about a flue. I referred to pitted flues. There is no inspection, there is no means of discovering a pitted flue until the hole has bored through the flue and the water and steam commences to come out at either end.

Mr. TOWNSEND. Do your engineers ever complain that the inspection is not properly done, that their engines are dangerous, and that they lack or have not had a proper inspection?

Mr. MANCHESTER. I have had a man make a complaint that the engine had been calked at the other end and that there was calking at this end, that it had been done two or three times, so they thought it had gone far enough, so that he thought it was time to take the flues out.

Mr. TOWNSEND. That is a partial answer to my question. But do they claim that their boilers have not been properly inspected by the men you employ to do that work?

Mr. MANCHESTER. No, sir.

Mr. STAFFORD. Would those complaints be made to you if the men had such complaints?

Mr. MANCHESTER. They would come to me finally, and perhaps might come directly to me.

Mr. TOWNSEND. What is the origin of this proposition here, if you know?

Mr. MANCHESTER. The origin of the bill?

Mr. TOWNSEND. Yes.

Mr. MANCHESTER. I don't know that I know. I think I can surmise. I think it is to make a job for somebody. Following out that line of thought, if the committee's figures are anything like correct, it would take somewhere between 1,000 and 1,200 competent boiler makers to do this inspecting for the Government. There are not 1,000 or 1,200 boiler makers to be had in this country. In fact, I don't know where you would find 50. If you would set out to find 50 competent boiler makers, men that are willing to work, I don't know where you would find them. So that if the bill should become a law and the Government should take away from us—for the Government would have to come to the railroads to get the men—1,000 or 1,200 boiler makers, we would have to go to the farms and take the fellows that are now raising high-priced food to make boiler makers of them.

The CHAIRMAN. Why not take some of the city people who are traveling the streets?

Mr. MANCHESTER. We can't find them.

Mr. TOWNSEND. We havn't any fellows tramping our streets.

Mr. STAFFORD. That is the condition in Milwaukee, also.

Mr. ESCH. If you should take them off the farm it would still further increase the cost of food.

The CHAIRMAN. I can send plenty of them to you.

Mr. MANCHESTER. As to the inspection proposition, I don't believe that any railway company that has been in the habit of having a safe and thorough inspection made—and while I have not referred to the inspection we make, I will say it is on the lines that have already been described—would want to change its inspection; we would want to make our inspection just the same. So it would not release the railroad company from the question of inspection.

I further believe that the railroad company has got a greater interest than that of safety. It has got a double interest in this proposition of inspection—both the safety proposition and the economic proposition.

There is no bigger lot of cowards in God's world than railroad officials, and when you go to talking safety propositions to them they are never going to neglect that feature of the case. So they will take care of the safety end of it, and the railroad man must, if he keeps his railroad alive and keeps his own position, take care of it.

The CHAIRMAN. You do not think the railroads need any urging to make them adopt safety propositions, then?

Mr. MANCHESTER. No; the only point I think you will find in that regard is that there are some things which come up in which the railroad man has been in doubt, strongly in doubt, as to whether the means proposed would really be an improvement in the way of safety, as to whether something proposed would be a better device; and that is just what is the matter with this bill. We doubt very much whether this is a safety device and whether any limbs or lives are going to be saved by this government inspection.

The CHAIRMAN. In your judgment, would it be safe in the railroads to rely on government inspection of boilers?

Mr. MANCHESTER. No, sir; I would not want to. The only way I would be willing to accept government inspection would be to have government responsibility go with inspection. Take the case of the insurance companies, and that is a little different. They take

the responsibility along with the inspection. We have had a very nice example of that in Milwaukee here lately. The Hartford Fire Insurance Company inspectors had just inspected the Pabst power plant before it blew up.

(NOTE.—This statement was corrected by Mr. Manchester in his statement at the close of the day's proceedings.)

I have seen by the papers that they are going into litigation. The Pabst people are making the contention that the boilers went off like that [indicating with three claps of the hands]. The insurance company gives them \$50,000 for each explosion, and they are going to try to make out that there were three explosions.

Mr. TOWNSEND. Do the insurance companies inspect their boilers?

Mr. MANCHESTER. The Hartford Insurance Company, when it insures a boiler, inspects it; yes, sir.

Mr. TOWNSEND. Do you know how many men it takes to do that?

Mr. MANCHESTER. No, sir; I have not any statistics to show that. I don't believe it is any different whether it is the Hartford Insurance Company or the municipal inspection, or whether it is any other inspection in the case of boilers that are now directly under the charge of that class of people there are two boiler explosions and two boiler damages causing loss of life and limb to every one such explosion in the case of locomotives.

Mr. STAFFORD. Do you know, in the instance you have cited of the Pabst Brewery boiler explosion, which caused a total loss of a quarter of a million dollars or more, whether the brewery management relied entirely upon the examination made by the Casualty Insurance Company's investigation?

Mr. MANCHESTER. My understanding is that they did, although I would not like to say that as a positive fact.

The CHAIRMAN. How about the inspection by the city of Milwaukee, which they did not rely upon?

Mr. STAFFORD. There is no municipal inspection of the brewery. We only provide municipal inspection of the beer.

Mr. MANCHESTER. We are not either sufficiently civilized or else we are too much civilized to have a boiler inspection in Milwaukee.

Mr. TOWNSEND. You represent what road?

Mr. MANCHESTER. The Chicago, Milwaukee and St. Paul Railroad.

Mr. TOWNSEND. I want to ask you a question here on another matter that was up the other day. I noticed from the report that you have 340 engines yet unequipped with the ash pan, the automatic cleaner.

Mr. MANCHESTER. Yes, sir.

Mr. TOWNSEND. What is the trouble with you?

Mr. MANCHESTER. Well, we have just finished 1,500 miles of road across the continent, and over four ranges of mountains, and have done it in quicker time than that amount of railroad has ever been built by anybody before, and we have been pretty nearly up against it in doing so. We have not had one day of time that we had any engines tallowed over in three years. Every engine we had was up to its limit all the time. Consequently we were put to a great disadvantage in holding engines for that purpose. Another thing, we had a lot of engines ordered and the manufacturers have disappointed us on the delivery of those engines, and that has been another block to our being on time.

Mr. TOWNSEND. How many engines have you on your road?

Mr. MANCHESTER. 1,600.

Mr. TOWNSEND. What proportion of those were equipped when this law went into effect? I mean that did not need any equipment under the law?

Mr. FAULKNER. As to the ash pan?

Mr. MANCHESTER. Something over a thousand, I don't know just the number. It changes very rapidly, every week or ten days now, and it is hard to get the figures exact.

Mr. TOWNSEND. So that since the law went into effect you have only equipped about 500?

Mr. MANCHESTER. What do you mean by "since it went into effect?" Do you mean since it was passed?

Mr. TOWNSEND. Yes, sir.

Mr. MANCHESTER. Or do you mean since the 1st of January last?

Mr. TOWNSEND. I mean since the law was passed.

Mr. MANCHESTER. Yes; we have equipped more than that number of engines, but we have not, for the reasons I have explained, met all the requirements as to being fully equipped on the 1st of January, 1910.

Mr. TOWNSEND. Are you in the business of equipping them now?

Mr. MANCHESTER. Just as fast as we can, although we have another thing that I did not refer to that we have also been up against. We have had one of the hardest winters in the West that we have had for a great many years. That, with a very heavy business, has made it equally difficult through the winter, although we were going as fast as we could, to equip our engines in accordance with the requirement of the law, without taking engines right out of revenue service, where the business was standing there waiting for them.

Mr. STAFFORD. The conditions have been so abnormal that it has been difficult for you, by reason of the severe winter, to even move coal from Milwaukee to the West to meet the needs of the people?

Mr. MANCHESTER. Yes, sir; we have heard that coal proposition rung at us pretty loud in the last few months.

Mr. ESCH. The Milwaukee road is, as is pretty well known, a well-managed railroad and the percentage of fatalities to travelers on it is low. You stated a while ago that the operating department of your road would consider a locomotive engineer as not of the first grade class unless he took some chances. Do you think that the knowledge of that fact might lead to an increase of recklessness on the part of your operators? I had had a suspicion of that fact for some years, but never had an official confirmation of it.

Mr. MANCHESTER. Well, I don't know that that expression was a proper one for me to make; and yet I believe there is not a railroad man but what recognizes that what we call an over cautious man and a man that is always taking into consideration the other side of the case would not be considered a successful railroad man.

Mr. ESCH. I suppose it was a pretty well-known doctrine to err on the side of safety.

Mr. MANCHESTER. That might be; but when you erred ten times when there was no risk involved, then perhaps that would not be a good thing to do.

Mr. ESCH. And you would run the risk the eleventh time and jeopardize human life?

Mr. MANCHESTER. No; it is not a question of jeopardizing human life. There is nobody who would even recognize for a moment a man who was reckless to that degree; but there is a difference between that and men who will go further than other men in accomplishing a purpose.

Mr. TOWNSEND. Would you condemn a man if an accident occurs because he runs with too low water for the purpose of making time? You would condemn him for being overcautious also. Now, what is a man going to do under those circumstances?

Mr. MANCHESTER. He has got to do as well as the average man would do under those circumstances.

Mr. TOWNSEND. If he makes a mistake and runs with too low water and an accident occurs, he will be discharged. If he is overcautious, he is also liable to be discharged.

Mr. MANCHESTER. If he is overcautious, yes; I would say so. I think an overcautious man is rather a useless appendage in this world, wherever you may put him—even if he be a Congressman.

Mr. ESCH. That would be quite liable to prevent accidents, if he knew that he had time enough to do all these things.

Mr. MANCHESTER. What is that? I did not understand that.

Mr. ESCH. He would be liable to prevent accidents caused by too little water if it was known that he had enough time to take water and he could take the time to do it.

Mr. MANCHESTER. The man has not a right to take those last chances of danger; he has no right to do that; but I am satisfied he does it, as I have already explained.

Mr. ESCH. In conformity with the policy of the railroad?

Mr. MANCHESTER. In conformity with the policy of every well-regulated railroad, yes.

The CHAIRMAN. In conformity, I suppose you think, with the quality of human nature?

Mr. MANCHESTER. That is it, Mr. Chairman; I did not use the right word. These questions have led up to the question of the water glass, and in the bill there is a term used there, "low-water indicator." The question was asked one witness what a low-water indicator was. I think I could readily answer on the same line that he did, that I don't know. I do know this, that in some of the States—I say some States; one State that I know of—some inventor has been successful in getting a low-water indicator required on a stationary boiler, although so far as I know it has never been suggested—at least not by the railroad people—that a low-water indicator could be used at all on a locomotive.

The CHAIRMAN. What is a low-water indicator on a stationary boiler?

Mr. MANCHESTER. It is an arrangement with a float in it, and when the water gets to a certain level the float is attached to a lever arrangement and opens a little whistle and the whistle blows. On a locomotive that is rocking and swaying any such a proposition could not be considered.

Mr. KENNEDY. Is there any automatic injector that will start to pump water and fill the engine when the water is low?

MR. MANCHESTER. Not that I know of. I don't know how an automatic injector could be used, because the service that the injector must perform, anyway, is very intermittent. Your engine is working hard some of the time and very light other times, and of course it is consuming water in the same proportions as it is working hard or light; and so I know of no injector that has ever been arranged that the level of the boiler would determine the amount of water that was being put into the boiler.

Then about water glasses. We use water glasses on all of our engines. We put them there largely because our enginemen asked for them. They thought they were a convenience. I never was favorable to a water glass. I believe, with some of the other witnesses, that the water glass has caused in some cases men being deceived and getting cases of low water thereby.

Summing up all that I have to say on this proposition, gentlemen, I do not feel that the railroad companies can afford to let up at all on the quantity or quality of their inspections and tests. I do not believe that any additional inspection by the Government on any lines indicated in the bill will add anything to the safety of life and limb. I believe it is going to add an enormous cost, and perhaps in some cases will be an embarrassment to some railroad companies, and perhaps to the people they serve. I can see that this might happen. The Milwaukee Company has never had any trouble with its labor organizations; but there might be such a thing as it or some other company having trouble with its boiler makers. The inspectors will be of the same craft and in very close sympathy with them, and with the unlimited power and the irresponsible power that they have got in the bill I think they could do a great deal to paralyze the railroad under such circumstances.

That is all, gentlemen.

STATEMENT OF MR. CHARLES A. SELEY, OF THE ROCK ISLAND RAILROAD.

Mr. Chairman, I only wish to say that the Rock Island road carries on its inspections of locomotive boilers practically on the same lines indicated by the other railroads, and the inspection is, as has been said, a continuous performance. Beginning even before the boiler is constructed, we, as well as the Pennsylvania Railroad and other first-class railroads, have our specification of boiler material. There is no mention of inspection other than shell and fire-box plates. Most of us inspect the stay-bolt material, tubes, and other parts entering into the construction of the boiler, so as to have a complete line on all the material, though of course the quality of the steel and its record is the most important. There have been several references here to burnt crown sheets, scorched crown sheets, and it is quite possible that members of your committee have not perhaps fully grasped the idea that an accident does not necessarily follow a scorched crown sheet. In fact, that is seldom the case. It is only when the water gets so low that the crown sheet gives way that the accident follows.

We have any amount of burnt crown sheets all the country over that do not injure the boilers so as to require a renewal of that sheet. The same thing is true of the side sheets.

There may be at times an undue accumulation of mud or scale. That does not result in an accident. It will sooner or later be rectified, when the time comes and it becomes necessary. I do not mean to say that the scorching or burning improves the material, but it may not necessarily deteriorate it to a point where the question of safety is involved or the necessity for immediate renewal and repair.

I also agree with the remarks of Mr. Manchester as to the low-water indicator. I had an experience at one time in my career as a state boiler inspector, for two years, in which capacity I inspected a great many stationary boilers. We did run on a few of these automatic devices, mostly with the float, as described by Mr. Manchester. Sometimes they were kept in pretty fair condition, although I really never had a record of an accident that was saved by the use of the device. It is purely impracticable to use it on a locomotive where there is the pitching and surging of the water due to the movement of the engine laterally, due to irregularities in the track, and the surge fore and aft due to brake applications and things of that kind.

Mr. TOWNSEND. What kind of a record could you find of an accident where a safety device had prevented it?

Mr. SELEY. Will you repeat that?

Mr. TOWNSEND. I was wondering how such an accident could be prevented.

Mr. SELEY. Well, a record in my memory or experience—nothing of that kind ever came under my observation in regard to this particular form of low-water indicator.

The CHAIRMAN. How could you tell why the accident did not happen when it did not happen?

Mr. SELEY. What I mean to say—perhaps I was not clear—was that it had never been known that it had done any good.

The principal thing which appeals to a great many of us is the amount of responsibility which is placed on this inspector, who apparently must be qualified as a designer, a constructor, an operator, and an inspector of steam boilers. It has been part of my experience as a mechanical engineer to have more or less to do with the designing of steam boilers, the preparation of specifications, and things of that kind; and yet it has come to me through a very considerable round of education. I believe that if a boiler-inspection bill should ever be framed for government inspection, the inspector should be relieved from responsibility covering questions of design, strength, and form. He should do what our inspectors do—judge of the workmanship, judge of the condition of the thing as he finds it from visible defects, if he can find any. If we make an order for a lot of locomotive boilers, we send a man down to the builder to inspect those boilers. He raises no question as to the thickness of those sheets, as to the width of the waterways, the size of the pipes and openings, and so on. Those are matters which have been laid out in advance of him by an educated mechanical authority somewhere, either in the management of our company or in the management of the locomotive works, whose specifications we may accept.

The material which that man sees put in the boiler has been inspected at the mills and other places where it is produced by another corps of inspectors, and we have a line on all of those matters.

So we have three men at least, or three classes of men, to look after that inspection. Here is our drawing office—our mechanical draftsmen and others that are versed in the mathematics and in the design of boilers, that get up the designs; or at least they are competent perhaps to approve the design and the specifications offered to us by the builders. Next we have the inspection which covers the quality of the material entering into the boiler. Those who have done that are skilled in making physical tests and chemical tests, tests by observation, that may be necessary to the acceptance of material. Then we have the boiler maker pure and simple, who goes down there to the works and sees that the boiler is properly constructed, that the rivets are properly driven, the staples are properly put in, the calking done. He witnesses the hydrostatic test and sees the steam test—all of the tests that are mentioned in the form of the specifications for the structure. He sees to all that and attends to it. That is in line with his education and with his qualifications, and it is my opinion that that is about as far as a government inspector should go.

The bill seems to us to lack several features. One is the question of appeal from the decision of the inspector. Suppose a man says to us, "We will have to lay up that engine; it is not designed right;" or suppose he says, "That hasn't got the proper material in it." There is no provision made for an appeal in such a case.

There is a lack, so far as we can see, of an insurance to the railroad companies that the rules for the inspection of these boilers which are to be promulgated by the Secretary of Commerce and Labor will be under the same grade of mechanical engineering intelligence that we would deem desirable in our own case in designing a boiler, or in criticising the designs and specifications of a locomotive builder. You may say that that is getting into book engineering, and some of our friends may say that the book engineer is not nearly as good as the fellow that makes these models and gets out and uses a riveting hammer and hydraulic tools, and all that sort of thing.

Mr. TOWNSEND. Have your men made any complaint that their engines were not properly inspected?

Mr. SELEY. No, sir; not to my knowledge. That would not necessarily come to me, on account of my position as mechanical engineer. I am not the operating end of the mechanical department; I have to do mainly with the engineering questions. What I would like to impress on you is that in our opinion there is a lack of technical engineering in this case which would protect the railroad company in the carrying out of the law. The law should be beneficent not only to the people that are not going to get blown up, but also to the railroad companies that are under supervision. In order to establish rules which are consonant with proper engineering practice, the best of experience, knowledge, and training and technical knowledge, and that sort of thing is there. You would not for one minute in case of disability or sickness call on a doctor who had not an education, book knowledge, and that sort of thing. Even the latest of them, the Christian Scientists, have their book. And we feel that it is not safe to trust this matter of rules and regulations, of the engineering that is necessary for the result that we are getting to-day, in the management of our boiler inspection and designing, and that sort of thing, without an addition to the bill in that respect. The bill seems to be modeled to a considerable extent on the marine law. I don't know

that I can say it as an actual fact, but the majority, if not all, of the government marine inspectors are engineers. They are not boiler makers. I wish to qualify that by saying that I am not sure of the fact, but if I am correct, of course the reason for it is this: That a great portion of their duties consists of an examination of the engineers to judge of their qualifications, and an engineer must certainly make an examination as to those qualifications very much better than a boiler maker could.

They also have a supervising board of engineers, examiners, and that sort of thing, to promulgate the requirements for steamboat vessel inspection. There is, of course, a great necessity for bringing about the utmost amount of safety in the case of steam boilers on vessels, because in that case the boiler is in the center of the vessel, and if anything happens to the boiler the consequences are more serious than they are in the case of a locomotive boiler accident.

Mr. STAFFORD. In your connection with the railroads have you any acquaintance with any accidents where the lives of any others than the engineer and fireman connected with the locomotive were imperiled by reason of a locomotive explosion?

Mr. SELEY. Yes; there have been such. As you have probably noticed, there is generally a third man on the locomotive.

Mr. STAFFORD. Other than the crew? Does it extend to the passengers, or only to the crew—those who happen to be about the locomotive at the time?

Mr. SELEY. I think that is entirely incidental to the location of the engine in reference to passengers and other people. I assume there may have been some accidents in which the explosion of the boiler has been of such a character as to kill other people. I think they are not frequent. In fact, there are relatively very few locomotive-boiler explosions. We have had a few on our railroad. I have personally investigated some of them. I can repeat what others have said here to-day, that in every case they have been caused by low water—those I have personally investigated.

Mr. ESCH. Do you use the water gauge on your system?

Mr. SELEY. We use water gauges.

Mr. ESCH. On all your locomotives?

Mr. SELEY. On all our locomotives.

Mr. ESCH. What is your personal opinion as to the utility of their use on locomotives?

Mr. SELEY. I regard them only as a convenience to the engineer, and a rather doubtful one. I entertain the same personal opinion expressed by Mr. Manchester.

Mr. ESCH. In ordering locomotives from locomotive works, do you specify the water gauge?

Mr. SELEY. We specify them as one of our standard practices; yes.

Mr. MANCHESTER. Mr. Chairman, in my remarks I referred to the explosion of the Pabst Brewery plant and the Hartford Insurance Company and its inspectors. I would be pleased if you would instruct the stenographer to make the notes read "the Boiler Insurance Company's inspector" and the "Boiler Insurance Company."

The CHAIRMAN. Well, I don't know that it makes any difference. They can not sue you for libel, anyway.

Mr. FAULKNER. We have no further witnesses on this bill. We are very much obliged to you for the hearing you have given us.

The CHAIRMAN. Is there any other bill you want to be heard upon?

Mr. FAULKNER. No, sir.

(Thereupon, at 5 o'clock p. m., the committee adjourned until Monday, January 31, 1910, at 10 o'clock a. m.)

EXHIBIT No. 1.

PHYSICAL TEST OF MATERIALS.

All materials used in the construction of the locomotive shall be of the best quality of their respective kinds, carefully inspected, and subjected to the following tests. Notwithstanding these tests, should any defects be developed in working, the corresponding part will be rejected.

Boiler and fire-box steel.—All plates must be rolled from steel manufactured by the open-hearth process, and must conform to the following chemical analysis:

| | Boiler steel. | Fire-box steel. |
|---------------------------|---------------|-----------------|
| | Per cent. | Per cent. |
| Carbon, between..... | 0.15 and 0.25 | 0.15 and 0.25 |
| Phosphorus, not over..... | .05 | .03 |
| Manganese, not over..... | .45 | .45 |
| Silicon, not over..... | .03 | .03 |
| Sulphur, not over..... | .05 | .035 |

No sheets will be used that show mechanical defects. A test strip taken lengthwise from each sheet rolled should without annealing have a tensile strength of 60,000 pounds per square inch and an elongation of 25 per cent in a section originally 8 inches long. Sheets will not be used if the test shows a tensile strength of less than 55,000 pounds or more than 65,000 pounds per square inch, nor if the elongation falls below 20 per cent.

Fire-box copper.—Copper plates for fire boxes must be rolled from best quality Lake Superior ingots; they must contain at least 99.75 per cent pure copper, and should have a tensile strength of 30,000 pounds per square inch and an elongation of at least 35 per cent in a section originally 2 inches long. Plates showing a tensile strength of less than 29,500 pounds per square inch will not be used.

Stay-bolt iron.—Iron for stay bolts must be double refined and must show an ultimate tensile strength of at least 48,000 pounds per square inch, with a minimum elongation of 25 per cent in a test section 8 inches long. Pieces 24 inches long must stand bending double both ways without showing fracture or flaw. The iron must be rolled true to gauges furnished by the Baldwin Locomotive Works, and must permit of cutting a clean, sharp thread.

Copper stay bolts.—Copper stay bolts must be manufactured from the best Lake Superior ingots; they must contain a minimum of 99.75 per cent pure copper, and when annealed should have an ultimate tensile strength of 30,000 pounds per square inch and an elongation of at least 35 per cent in a section originally 2 inches long. Copper with a tensile strength of less than 29,500 pounds per square inch will not be used.

Boiler tubes.—All boiler tubes will be carefully inspected and must be free from pit holes or other imperfection. Each tube must be subjected by the manufacturers, before delivery, to an internal hydraulic pressure of not less than 500 pounds per square inch. They must be rolled accurately to the gauge furnished by the Baldwin Locomotive Works, filling the gauge to a plump fit. They must be expanded in the boiler without crack or flaw, and must conform to the following test requirements:

Charcoal iron.—A test section 1½ inches long, cut from any tube, must permit of vertical hammering without showing transverse cracks when flattened down.

Seamless steel.—All tubes must be drawn from steel manufactured by the open-hearth process and must conform to the following analysis: Carbon, 0.18 to 0.24 per cent; manganese, 0.40 to 0.65 per cent; phosphorus, not over 0.04 per cent; sulphur, not over 0.05 per cent. A length of 1½ inches, cut from any tube, must stand collapsing by vertical hammering without showing any cracks. A length of 4 inches, cut from any tube, must stand horizontal collapsing until the sides meet without cracking.

Boiler tubes of brass or copper.—Tubes of brass or copper to be of uniform circumferential thickness and solid drawn; to be perfectly round, and to resist an internal hydraulic pressure of 500 pounds per square inch. After annealing they must stand the following bending and flanging tests:

Brass and copper pipes.—A length of 4 inches, cut from any tube, must stand being sawn lengthwise and doubled inside out without showing signs of cracks. Any tube must stand having one end flanged without cracking. The tube will be held in a die with the end to be flanged projecting. For tubes of diameters between $1\frac{1}{4}$ and $2\frac{1}{2}$ inches this projecting end is to be five-eighths of an inch long. For other diameters a proportionate length is to be flanged.

Bar iron.—Bar iron should have a tensile strength of 50,000 pounds per square inch, and an elongation of 20 per cent in a section originally 2 inches long. Iron will not be used if tensile strength falls below 48,000 pounds nor if elongation is less than 15 per cent, nor if it shows a granular fracture.

Steel tank plates.—Tank plates to be rolled from homogeneous steel billets, and must be of good finish and free from surface defects, such as spalling or bad buckling. The steel to be of such quality that pieces taken lengthwise of any plate shall show no signs of fracture when bent double while cold, over a mandrel whose diameter is one and a half times the thickness of plate so tested.

Steel for forgings.—All blooms for use in axles, pins, rods, guides, and similar forgings, must be made by the open-hearth process and be free from seams, slivers, and other surface defects.

Drillings will be taken from a point midway between the center and the surface of the bloom, and must conform to the following specification when analyzed by Baldwin Locomotive Works standard method: Carbon, about 0.40 per cent; manganese, not over 0.60 per cent; phosphorus, not over 0.05 per cent; sulphur, not over 0.05 per cent.

These blooms should be of such quality that a test piece, machined cold from a full-sized bloom of each heat used, has, when tested, an ultimate tensile strength of 80,000 pounds per square inch, and an elongation of 20 per cent in a test section originally 2 inches long.

Blooms will not be used that show an ultimate tensile strength of less than 75,000 or more than 90,000 pounds per square inch, or an elongation of less than 15 per cent.

All forgings which develop seams or pipes upon machining will be rejected.

Chilled wheels of approved make and of following guaranteed mileage: For 28-inch wheels, 40,000 miles; for 30-inch wheels, 45,000 miles; for 33-inch wheels, 50,000 miles; other sizes in proportion. (Adopted by Joint Committee Master Car Builders' Association, American Railway Master Mechanics Association, and Association of Manufacturers of Chilled Car Wheels, November 21, 1889.) Deficient mileage will be adjusted upon the return of defective wheel, or that part of same containing the defect causing withdrawal from service. Or, if preferred, wheels will be furnished subject to approved specification and drop test without mileage guaranty.

Spring steel.—All spring steel must be manufactured by the open-hearth or by the crucible process, and must be free from any physical defects. The metal desired has the following composition: Carbon, 1 per cent; manganese, 0.25 per cent; phosphorus, not over 0.03 per cent; silicon, not over 0.15 per cent; sulphur, not over 0.02 per cent.

Steel will not be used which shows on analysis less than 0.90 or over 1.10 per cent of carbon, or over 0.50 per cent of manganese, 0.05 per cent of phosphorus, 0.25 per cent of silicon, or 0.05 per cent of sulphur. A tempered bar resting upon supports 24 inches between centers must not take a permanent set of more than 0.05 inch after the first application of a load corresponding to a fiber stress of 135,000 pounds per square inch, nor more than 7.5 per cent of the total deflection under 160,000 pounds fiber stress, nor any further set after five additional applications of a load giving a fiber stress of 150,000 pounds per square inch.

Phosphor-bronze.—All bronze to be made from new metals and should show the following analysis: Copper, 79.70 per cent; tin, 10 per cent; lead, 9.50 per cent; phosphorus, 0.80 per cent. Bronze will not be used should analysis show results outside the following limits: Tin, below 9 per cent or over 11 per cent; lead, below 8 per cent or over 11 per cent; phosphorus, below 0.70 per cent or over 1 per cent.

Bronze will also be rejected in case it contains 0.50 per cent of any substances other than the four elements mentioned in this specification.

EXHIBIT No. 2.

BALDWIN LOCOMOTIVE WORKS—DEPARTMENT OF TESTS.

PHILADELPHIA, October 22, 1909.

The following are the results of the physical and chemical tests of steel plate entering into the construction of boiler and fire box for locomotive, register No. ——, class 10 24-441, C. 297, road No. ——, for A., T. & S. F.:

| Location. | Mark. | Maker. | Sec- tion. | Elastic limit (pounds per square inch). | Ultimate strength (pounds per square inch). | Elong- ation. | Con- traction. | Chemical analysis. | | | |
|-------------------------|-----------|--------|---------------|--------------------------------------------------------|------------------------------------------------------------|------------------|-------------------|--------------------|------------|------------------|---------------|
| | | | | | | | | Car- bon. | Manganese. | Phos- phorus. | Sul- phur. |
| Gusset..... | A. 2031 | L. | 8 | ..... | 57,260 | 30.0 | Per ct. | 18 | 36 | 0.019 | 0.026 |
| Second ring..... | B. 1953 | L. | 8 | ..... | 59,460 | 31.0 | ..... | 17 | 35 | .018 | .023 |
| Sides..... | R.C. 1957 | L. | 8 | ..... | 57,620 | 31.0 | ..... | 17 | 36 | .012 | .023 |
| Sides..... | L.C. 1959 | L. | 8 | ..... | 58,240 | 26.0 | ..... | 18 | 36 | .019 | .026 |
| Top..... | D. 2169 | L. | 8 | ..... | 57,220 | 30.5 | ..... | 18 | 36 | .019 | .026 |
| Tube..... | E. 2084 | L. | 8 | ..... | 61,040 | 27.5 | ..... | 17 | 36 | .012 | .023 |
| Dome..... | F. 2083 | L. | 8 | ..... | 57,430 | 33.0 | ..... | 17 | 35 | .018 | .023 |
| Throat..... | G. 2111 | L. | 8 | ..... | 57,180 | 30.5 | ..... | 17 | 36 | .012 | .023 |
| Back..... | H. 2018 | L. | 8 | ..... | 58,800 | 28.0 | ..... | 17 | 35 | .018 | .023 |
| Crown and sides..... | N. 1252 | L. | 8 | ..... | 55,120 | 34.2 | ..... | 15 | 35 | .016 | .025 |
| Tube..... | O. 1361 | L. | 8 | ..... | 56,600 | 27.0 | ..... | 17 | 38 | .026 | .025 |
| Back..... | P. 1188 | L. | 8 | ..... | 53,880 | 31.0 | ..... | 15 | 35 | .016 | .025 |

Material manufactured by Lukens Iron and Steel Company.

BALDWIN LOCOMOTIVE WORKS,
R. K. JOHNSON.

Per G.

EXHIBIT No. 4.

DETAILS OF CONSTRUCTION.

Boiler.—Made of plates of homogeneous steel for a pressure of —— pounds per square inch, and tested with steam to at least 20 pounds per square inch above the boiler pressure, and with hot water to one-third above the boiler pressure.

Waist —— inches in diameter at smoke-box end, made —— top, with one dome placed ——. Waist plates —— inch thick. All longitudinal seams ——

All boiler and fire-box seams calked inside and outside where possible. All holes reamed perfectly true after sheets are put together, holes slightly countersunk on inside and outside edges. No hand riveting permitted except where it is impossible to use power riveters. All calking edges of plates planed where possible and calked with round pointed calking tool, insuring plates against injury by chipping in calking with sharp-edged tools. All boiler brace jaws drop forged, with holes drilled. All rivet and pin holes in braces to be drilled. All jaw-pins to be turned to give full body bearing on both sides of jaw, and to be held in position by nut, washer, and cotter-pin. All T irons fastened to the interior of boiler shell to be machined accurately to fit the radius of boiler. Tube sheets to be thoroughly annealed and tube holes accurately reamed to gauges; sharp corners carefully rounded to avoid cutting tubes in setting.

Throat sheet of sufficient thickness to prevent undue thinning where flanged. All parts well and thoroughly stayed. Liners on inside of side sheets, providing double thickness of metal for studs of expansion braces, if side sheets are less than nine-sixteenths of an inch thick.

Dome.—Dome ring to be of seamless open-hearth forged steel, turned and accurately fitted to the interior of dome sheet before being drilled and riveted. Dome cap to be of forged steel. Dome base to be of seamless open-hearth forged steel, flanged and radially planed to fit the outer shell of boiler. The interior bored to receive the body sheet of dome. All rivets connecting dome to boiler to be driven by hydraulic pressure.

Tubes.—Of —— No. —— wire gauge, with copper ferrules and swaged at ends in fire-box tube sheet —— in number —— inches in diameter, and —— feet —— inches in length.

Fire box.—To burn —— inches long and —— inches wide inside; of homogeneous steel, all flanged plates thoroughly annealed after flanging; side sheets —— inch, back sheets —— inch, crown sheet —— inch thick, flue sheet —— inch thick. Water space —— inches sides and back, —— inches front. Outside and inside surfaces of water-space frame, against which the sheets of the fire box and outer shell are riveted, to be machined smooth and fitted to gauges. Water-space frame —— riveted.

Stay bolts.—Stay bolts of iron, screwed and riveted to inside and outside sheets. All side stay bolts to have three-sixteenths-inch hole, $1\frac{1}{4}$ inches deep from outside to indicate when broken in service. All stay bolt threads turned off between sheets.

Fire door opening formed by flanging and riveting together the inner and outer sheets, except on small engines. Tool guard to be cast on lower part of fire-door frame.

Fire-brick arch ——.

Crown staying.—Crown sheet supported by crown bars each made of two pieces of wrought iron, bearing on side sheets, and stayed by braces to outside of boiler. Crown sheet held by crown-bar bolts with head on under side of crown sheet; or,

By \perp -bars above crown supported by braces from outside shell of boiler. The crown sheet held by crown-bar bolts with taper fit through crown sheet and button head under crown sheet.

By radial stay bolts screwed through crown sheet and roof of boiler and riveted over. Central rows with heads below crown sheet on boilers 42 inches diameter and larger. Provision to be made for vertical expansion of fire-box tube sheet, if diameter of waist is 46 inches or over.

[Specifications No. 143.]

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY.

MOTIVE POWER DEPARTMENT.

TOPEKA, KANS., February 5, 1904.

Specifications for steel plate.

1. Classification recognizes but three grades of metal, viz: Fire-box steel, flange steel, and tank steel.

2. All fire-box and flange steel plates must bear maker's name, and heat and sheet numbers legibly stamped.

3. A careful examination will be made of each plate, and those showing seams or cracks at sheared edges, or which have cracks, slivers, cinders, slag, or depressions in the surface, or which develop defects in working, will be rejected. Plates measuring a hundredth of an inch (0.01 inch) less than the thickness ordered, in their thinnest part, will be rejected.

4. All plates must be of the shape and dimensions ordered.

5. Any excess in weight of flange or fire-box steel over that corresponding to the dimensions given in the order will be paid for only as specified in the standard table of allowances for overweights.

Table of allowances for overweights.

| | Up to 85 inches width. | Over 85 inches width. |
|-----------------------------------------|------------------------------|-----------------------------|
| | Per cent. | Per cent. |
| For plate $\frac{1}{8}$ inch thick | 10.0 | 14 |
| For plate $\frac{1}{4}$ inch thick | 8.0 | 12 |
| For plate $\frac{3}{8}$ inch thick | 7.0 | 10 |
| For plate $\frac{5}{16}$ inch thick | 6.0 | 8 |
| For plate $\frac{1}{2}$ inch thick | 5.0 | 7 |
| For plate $\frac{9}{16}$ inch thick | 4.5 | 6 |
| For plate $\frac{5}{8}$ inch thick | 4.0 | 5 |
| For plate over $\frac{5}{8}$ inch thick | 3.5 | 4 |

A variation of 5 per cent from calculated weight of tank steel will be cause for rejection.

Measurements will be taken from the sheet and not from the test coupon. In computing weight of plates from dimensions, 1 cubic inch of steel will be assumed to weigh 0.2836 of a pound.

6. A test coupon 36 inches long and 2 inches wide must be cut from each sheet by the maker. The sheet must be previously stamped with a square, oval, or circular mark. The coupon must be cut lengthwise of the sheet and must not be annealed. One-half of the stamp figure must be on the sheet and one-half on the coupon, both sheet and coupon being thus stamped with the same figure to render identification certain. The coupon must be as perfect as the sheet itself.

7. All tests will be made in a section originally 8 inches long, 1 inch wide when reduced, and of the same thickness rolled; or the test coupon may have straight edges throughout, width $1\frac{1}{2}$ inches. The elongation will be measured between punch marks originally 8 inches apart. When reduced sections are tested, the distance between the bottoms of the fillets will be not less than 9 inches. The fillets will have not less than one-half inch radius.

8. For both fire-box and flange steel a test for homogeneity will be made by taking a portion of the test coupon, nicking it on opposite sides alternately with a chisel or by machine, nicks about 1 inch apart, and bending away from the nicks by light blows while test piece is held firmly in a vise. Laminations more than one-fourth of an inch long, or if the fracture shows flaws, foreign matter, or cavities, will cause the rejection of the sheet.

9. Samples of both flange and fire-box steel, hot, cold, or after being chilled from a cherry-red heat, must stand bending through 180° and hammering down without flaw or crack on outside of bend.

FIRE-BOX STEEL.

10. Must be open-hearth steel.

Will be acid-process steel, unless otherwise stipulated on order.

Fire-box steel includes all inside fire-box plates, back tube plates, and connecting or outside throat or neck plates. It also includes, in all stationary and marine boilers, all plates exposed to direct contact with flame or fuel. In all return flue locomotives, marine boilers, or stationary boilers it includes furnaces, combustion chambers, riveted flues, and inside tube sheets, the front flue sheet being thus classified where return flue is used.

The test samples should show a tensile strength of 60,000 pounds per square inch and an elongation of 28 per cent in 8 inches. Sheets will be rejected if the tests show a tensile strength of less than 54,000 pounds, or more than 65,000 pounds per square inch, or if the elongation falls below 25 per cent in an original length of 8 inches.

The chemical composition desired is as follows (samples for analysis to be taken from test coupon):

| | Per cent. |
|----------------------------|-----------|
| Carbon..... | 0.18 |
| Phosphorus, not above..... | .03 |
| Manganese..... | .40 |
| Sulphur..... | .02 |
| Silicon..... | .02 |

Plates will be rejected having:

| | |
|----------------------|------|
| Carbon over..... | .25 |
| Carbon below..... | .15 |
| Phosphorus over..... | .035 |
| Manganese over..... | .60 |
| Silicon over..... | .03 |
| Sulphur over..... | .025 |

FLANGE STEEL.

11. Must be open-hearth steel.

Flange steel includes front tube sheet, all butt strips, and all exterior plates of boiler. It also includes all exterior plates of marine and stationary boilers that are not exposed to direct heat, and includes all steel required to be flanged in press for cylinder head covers, dome casings, smoke-box fronts and doors, filling pieces for car bolsters, etc.

The test samples should show a tensile strength of 60,000 pounds per square inch, and an elongation of 28 per cent in 8 inches. Sheets will be rejected if the tests show

a tensile strength of less than 54,000 pounds or greater than 65,000 pounds per square inch, or if the elongation falls below 22 per cent in an original length of 8 inches. However, should the elongation be 28 per cent or over, plates will not be rejected because of excessive tensile strength.

The chemical composition desired is as follows (samples for analysis to be taken from test coupon):

| | |
|-----------------|----------------------------------------|
| Phosphorus..... | 0.03 per cent, not over 0.04 per cent. |
| Manganese..... | .35 per cent, not over .45 per cent. |
| Sulphur..... | .03 per cent, not over .035 per cent. |

TANK STEEL.

12. Tank steel includes smoke-box, tank, and smoke-stack steel, etc. It is required that tank steel be soft and homogeneous. Special attention will be paid to surface finish.

Sheets that will not stand bending 180° cold will be rejected.

[Specification No. 114, Santa Fe System.]

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, MOTIVE POWER DEPARTMENT.

SPECIFICATIONS FOR STAY-BOLT IRON.

Material under these specifications must be rolled of entirely new iron. Bars rolled from scrap will not be accepted under any conditions.

Iron for stay bolts must have a tensile strength of not less than 48,000 pounds per square inch, and an elongation of not less than 28 per cent in a test section of 8 inches, original length. The fracture of the test piece must be uniformly fibrous.

The iron must bend double on itself (what is commonly known as the figure 8 bend) cold, without crack or fracture on outside of bend.

The iron must be free from longitudinal seams, ridges, and fins, and must be capable of taking a good thread with dies in fair working order.

Two samples taken at random from each size in a shipment, and threaded with 12 threads per inch, will be screwed into a piece of boiler plate and allowed to project through one-quarter inch. The end must rivet into a full head with a 4-pound boilermaker's hammer, without cracking or splitting.

Samples of the iron, after being threaded, must bend cold around a cylindrical mandrel whose diameter equals twice the diameter of the iron tested, without any open rupture on outside of bend.

Iron will be measured for size and roundness by the Santa Fe limit gauges (same as the M. C. B. limit gauges for bar iron) and will be rejected if it can not enter the plus (+) or long end of the gauge, or can in any way enter the minus (-) or smaller end of the gauge.

Bars are to have both ends painted red before shipping, so as to avoid mixing with common iron.

In all cases of rejection, shipper must pay freight both ways.

OFFICE OF SUPERINTENDENT OF MOTIVE POWER,
Chicago, Ill., May 3, 1906.

(No changes have been made since edition of June 23, 1903.)

—
(Circular Letter No. 395).

[Boiler inspection—stations, pumping plants, etc.]

CHICAGO, June 16, 1905.

All division master mechanics and superintendent of shops.

GENTLEMEN: Circular letter No. 90, dated July 3, 1902, relative to the care and testing of stationary boilers, is hereby canceled and superseded by the instructions which follow herewith:

All stationary boilers, including water-service boilers and steam boilers at stations, hotels, or other points, shall be under the jurisdiction and care of the division master mechanics, who will be held responsible for the proper care and testing of same.

Each stationary boiler shall be tested with pressure test at least once each year by having a competent man do this work with a check gauge and force pump or other means of producing the proper pressure. All such boilers must be marked with date of test and pressure at which tested, either with pressure plug or stamped in some conspicuous place upon the boiler.

In addition to the pressure test above mentioned, all such boilers must be carefully inspected, both internally and externally, as to their condition and a careful examination made for corrosion or other deterioration, at least once in six months, and oftener if the condition of the boiler is such, in the opinion of the master mechanic, it is desirable to make more frequent inspection.

Safety valves and gauges must be tested at the same time and also at intermediate intervals not exceeding three months apart.

Boilers with stay bolts, such as the locomotive type, should have these stay bolts inspected once every three months and a regular stay-bolt report should be made.

Copies of reports of all tests must be sent to the mechanical superintendent and kept on file in the master mechanic's office.

Yours, truly,

A. LOVELL,
Superintendent Motive Power.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM.

INSTRUCTIONS FOR BOILER WASHERS.

Boilers should be thoroughly cooled before being washed, when time will permit. When they are cooled in natural way without the use of water the steam should be blown off, but the water must be retained above the top of crown sheet and boiler allowed to stand until the temperature of the steel in the fire box is reduced to about 90° or so that it feels cool to the hand; then draw off water and wash. When the engine can not be spared from service sufficiently long for it to be cooled in this manner before washing, proceed as follows:

When there is sufficient steam pressure to work it, start the injector and fill the boiler with water until the steam pressure will no longer work the injector. Then connect water-pressure hose to feed hose between engine and tender, and fill boiler full, allowing the remaining steam pressure to blow through siphon cock or some other outlet at top of the boiler. Open blow-off cock and allow water to escape, but not faster than it is forced in through the check, so as to keep the boiler completely filled until the temperature of the steel in the fire box is reduced to about 90°, then remove all plugs and allow boiler to empty itself.

Blueprint No. 22-1584 shows the washout nozzles to be used; also a nozzle coupling which will permit turning the nozzle freely without twisting the hose.

Begin washing flue holes on side of boiler opposite front end of crown sheet. Wash top of crown sheet at front end, using nozzle No. 1 or No. 2, then use nozzle 3 or 4 to wash between rows of crown bars and bolts at right angles to nozzle and directing the stream toward back end of crown sheet. After washing through holes near front end of crown sheet, use holes in their respective order toward the back of the crown sheet. The object of this method is to work the mud and scale from the crown sheet toward the side and back legs of the boiler and prevent depositing it on the back end of flues.

Next wash crown sheet from boiler head, using nozzles 1 and 3 or 6. When Nos. 3 or 6 are used, the swivel connection with hose should be used and nozzle should be inserted to the front end of crown sheet and slowly drawn back and revolved at the same time so as to wash top of boiler and all radial stays or bolts as well as crown sheet.

Then wash back end of flues through holes in connection sheet, using nozzles Nos. 1, 5, and 6, and revolving same by means of swivel connection when the curved nozzles are used.

Next, wash the water space between back head and fire-box door sheet through the holes in back head with nozzle No. 6, being careful to remove all scale and mud above and below door holes.

Inside arch flues should also be washed thoroughly from the back head and scraped with proper form of scraper if found necessary to make them clean.

Now return to holes on side of boiler opposite crown sheet, using nozzles 5 and 6, revolving same so as to thoroughly wash down side sheets and stay bolts, making sure that all spaces on side of fire box are clear of mud and scale.

Now wash through holes near check valves near front end of boiler, using nozzles 1 and 5 or 6, with swivel connection.

Then wash through hole in bottom of barrel of boiler near the rear end, washing toward the mud drum, if any. If no mud drum, wash toward the throat sheet with nozzles 5 or 6. Then use straight nozzle directly against the flues, reaching as great space as possible in all directions.

Then use the bent nozzle through the front hole in bottom of barrel, and also the straight nozzle in same manner as above, until certain that the flues and spaces between flues and barrels are as clean as possible to make them.

If there are washout plugs in the front flue sheet, the washing through them should be done before washing the bottom holes of barrel and should be done by means of a long pipe nozzle of sufficient length to reach back to the back flue sheet. If the holes are among the flues, the nozzle should be a bent one like No. 6 and should be revolved as it is drawn back from the back end of the flues to the front end. If there are holes beneath the flues in the smoke box, a long straight nozzle should be inserted in them after finishing in the upper holes and the bottom of the barrel thoroughly washed to remove any pieces of scale that may have lodged there.

After the washing of the barrel is completed, clean the back end of arch flues, making sure that they are free from scale at that end.

Then use nozzles Nos. 5 and 6 in the side and corner holes of water legs, revolving same thoroughly to clean the side sheets, and finally clean off all scale and mud from the mud ring by means of straight nozzles in the corner holes.

It must not be assumed that because the water runs clear from the holes that the boiler is cleaned, but all spaces must be examined carefully with rod and light, and if necessary use a pick, steel scraper, or other tools to remove accumulating scale.

A. LOVELL,
Superintendent Motive Power.

OFFICE OF SUPERINTENDENT MOTIVE POWER.

August 8, 1907.

O

HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
OF THE HOUSE OF REPRESENTATIVES

ON BILLS AFFECTING

INTERSTATE COMMERCE

PART VI

WASHINGTON
GOVERNMENT PRINTING OFFICE
1910

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES.

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GORDON RUSSELL, TEXAS.

THETUS W. SIMS, TENNESSEE.

ANDREW J. PETERS, MASSACHUSETTS.

BILLS AFFECTING INTERSTATE COMMERCE.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,

January 31, 1910.

The committee met at 10 o'clock a. m., Hon. James R. Mann (chairman) presiding.

The CHAIRMAN. The following communications which have been presented by Mr. Richardson, a member of this committee, in relation to the so-called "full-crew bill," will be printed in the record. Also statement of G. A. Heller, trainmaster, western division, New York, New Haven and Hartford Railroad Company.

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY,
Birmingham, Ala., December 14, 1909.

BORALI NATIONAL FULL-CREW BILL.

Hon. WILLIAM RICHARDSON, M. C.,
Washington, D. C.

DEAR SIR: Referring to our exchange of wires of November 30 and December 1, regret I was unable to see you before your leaving for Washington, as I was desirous of discussing from a practical standpoint some of the objections to the above bill. I understand that you are on that committee, and therefore take the liberty of sending you an abstract from an argument prepared on it by one of our general superintendents, who has risen in the railroad service from a freight brakeman before the time of air brakes, safety appliances, etc., to his present position.

This company operates a mileage of about 5,600 miles, and we have figured the actual increase of our trainmen's pay roll that would result from a compliance with this law in a manner which would give us the full efficiency of our power and train movement, and it amounts to \$32,500 per month, or \$390,000 per annum, and the aggregate for 292 railways operating in the United States, with mileage aggregating 228,801, is \$19,200,000 per annum, equivalent to a capital expenditure of nearly \$5,000,000 without return compensation to the railroad or an increase in the safety to life and limb or transportation of property.

While the inclosed argument is a little lengthy, I respectfully request that you read it carefully, and if convincing, that you will assist us in defeating this bill.

Yours, truly,

A. D. LIGHTNER.
G.

[Copy.]

SPRINGFIELD, Mo., November 16, 1909.

Our argument against it and our objection to the bill is that it does not promote greater safety to the traveling public or railway employees or railway property, and that instead of this its tendency is to increase accidents. Briefly, we object to it because it entails an enormous expense without any compensating return to the public, the railroad company, or employees, except that it increases the demand for train men, thus farther restricting our choice in selecting the most careful and competent men.

Of course, the full-crew bill simply means three brakemen on a train, and should be treated accordingly. Hence, my argument all the time has been simply with reference to the third brakeman on freight trains.

In twenty-five years of experience in the operating department I have never known of an accident of any kind, either to a train or to an employee upon a train, resulting from there being but two brakemen on the train, or that would have been prevented had there been three brakemen on the train.

The rules for train operation are practically standard upon all railroads in the United States, and these rules provide fully for the safe and proper handling of trains with two brakemen, and under all conditions and circumstances a conductor and two brakemen are sufficient to carry out every rule, and of course, if the rules are carried out, there will be no accidents of the nature under discussion—that is, collisions and similar accidents other than derailments, with which, of course, the train men have nothing to do.

There was present a number of representatives of the Brotherhood at each of the meetings I attended, and I asked each one the question as to whether he had ever heard of an accident occurring by reason of there being only two brakemen, or if it could have been prevented by having three or even more brakemen, and in not a single instance had any of them ever heard of such an accident.

On the other hand, however, while I was connected with the Iron Mountain Road freight trains were equipped with three brakemen. This practice grew out of the old wood-burner days, when they provided a third man to help pitch wood, and for some reason this third brakeman was continued after the wood burners were abandoned. In my five years' connection with the Iron Mountain Road there were a great many accidents there, actually due to there being three brakemen on a train, and, while this statement may seem at first glance to be extravagant, yet upon giving it further thought the reason is quite plain. With three brakemen on a train two of the brakemen ride in the caboose and one on the engine. There being so little to do with our present-day air-brake equipment, the two men who ride in the caboose naturally divide the work, and, in consequence, at times each man depends upon the other to do certain things, with the result that neither of them do it. Boiled down this is the old adage that "What is everybody's business is nobody's business."

The conductor feels that he has two experienced brakemen on the rear of his train, and relies upon them to take care of the rear of the train. Then each of these two brakemen depend upon the other to flag at a certain place, with the result that the flagging is not done.

We had one division on the Iron Mountain Road from Little Rock to Alexandria, a distance of 298 miles, on which we employed only two brakemen to a train, and these brakemen were colored men. The Brotherhood of Railroad Trainmen demanded that we put three brakemen on these trains, and that the third brakeman be a white man, using as an argument that this third man was required as a flagman. To meet this argument I kept a record for a period of either eighteen or twenty-four months, I am not sure which, recording all accidents occurring on the system and the causes. This record showed that during the period there were 49 rear-end collisions resulting from either failure to flag or improper flagging, and of these 49 rear-end collisions not a single one occurred upon the 298-mile division above referred to, where we had but two brakemen, and this, notwithstanding that this division handled a heavy business—in fact, ranked second in density of traffic on the system—and was a crooked, hilly road.

Every one of the 49 accidents occurred with trains equipped with three brakemen, and a very large number of them were actually due to there being three brakemen and, I believe, would not have occurred had there only been two brakemen on the train.

Another argument used in favor of the bill is the longer and heavier trains operated now, as compared with some years ago. I believe the Interstate Commerce Commission's figures will be available to you and I believe you will find that the average number of cars hauled per train has increased very little in the last twenty years. On most roads in the Middle West it has not increased at all. Of course the weight of the train has increased, because the cars are of heavier capacity and the cars themselves are heavier. The engines have increased in capacity, but the increase in the weight of the cars and load per car has more than offset the increase in the size of locomotives. In the case of the Frisco Railroad, for instance, there has been an increase of less than one car in the average number of cars hauled per train mile in twenty years. The weight of the train which I mention has increased has nothing to do with the brakeman's duties, because the stopping of the train is now done by air brakes instead of by hand.

In the hand-brake days, where it was necessary to stop at an unusual point, the brakeman had to stop the train by hand brakes, and when the train came to a stop he was probably eight or ten car lengths ahead of the caboose; then he went back to flag. Now the train is stopped by the engineer. A whistle signal is sounded for him to flag, and it is his duty to get off and start back even before the train comes to an actual stop. Hence the protection of the rear of the train is a much simpler proposition now than it was before the air brakes came in use. The duties of a brakeman, of course, are not nearly so great now as they were then. Cars are built stronger, the draft gear is of improved design and stronger, so that there are very few cases of trains breaking in two, and when they do break in two both sections of the train stop immediately by the automatic action of the brake.

To require three brakemen on a train, of course, increases the number of brakemen about one-third. This means increasing the demand to that extent, while at the present time it is difficult during seasons of heavy business to secure reliable, sober, dependable men. With this increased demand we will be required to employ inexperienced men and men otherwise undesirable and unsafe.

Three brakemen are now used on our local freights simply because of the unloading of way freight and the switching required of these trains at local stations, and in order that the switching and loading and unloading of freight may be carried on at the same time.

You are of course familiar with the fact that the trainmen have in view with this bill not only the employment of more men, thus increasing the demand and making their positions stronger, but also desire it as a feature of embarrassment to railroads in case of strikes.

If the law required three brakemen there would be many times when, with a brakeman getting sick, quitting upon the road, or other similar reasons, we would have to tie up the train, delaying perishable freight and live stock because of not having the full complement of men.

This bill has been defeated before the legislature of nearly all of the States. It was passed by the legislature of the State of New York, and vetoed by Governor Hughes on the ground that it was a very heavy expense without any compensating return.

Of course it is rather difficult to recall under present circumstances all of the objections that would occur to one in the heat of argument, but you can say safely that there is not a record of an accident ever occurring to a train because of there being but two brakemen on that train.

(Signed) W. T. T.

MOBILE AND OHIO RAILROAD COMPANY,
OFFICE OF THE GENERAL MANAGER.
Mobile, Ala., January 13, 1910.

Hon. WM. RICHARDSON.

Congressman Eighth District of Alabama.

Washington, D. C.

MY DEAR MR. RICHARDSON: Please permit me to present for your consideration certain facts, which are conclusive to my mind that the Borah full-crew bill (S. 1986), which I understand is now in the hands of the Senate Committee on Education Labor, and the Dawson full-crew bill (H. R. 7553), now in the hands of the House Committee on Interstate and Foreign Commerce, are both unreasonable and unnecessary and should not be favorably considered by the committees above referred to, or made part of our federal laws by Congress.

These bills provide, in part, that common carriers shall neither run nor permit to be run any passenger, mail, or express train composed of three cars or more, which does not carry with it a crew consisting of at least one engineer, one fireman, one conductor, one baggage master, one flagman, and one brakeman; nor run or permit to be run any freight train, composed of twenty-five cars or more, not manned with a crew consisting of at least one engineer, one fireman, one conductor, one flagman, and two brakemen.

This provision of these bills is both burdensome and unnecessary, because it creates additional expense, interferes with the proper operation of trains and the exercise of discipline to the crews thereof, without accomplishing any results which are at all commensurate with the disadvantageous conditions which are thereby created.

The word "brakeman," used in the bill in connection with passenger-train service, is a misnomer, for the reason that since the general introduction of modern appliances passenger trains are entirely controlled by air brakes operated by the engineer, and there is therefore no necessity whatever for an extra man to perform the duties of a brakeman.

In so far as the Mobile and Ohio Railroad Company is concerned, the passage of this law would mean that it would be incumbent upon us to put an extra man on all of our through and local passenger trains, and even on some of our branch-line trains, who would have no duties whatever to perform.

On a number of our branch-line trains the extra man would increase very materially the expense of operating such trains, thus imposing an additional burden on our main stem, as a number of these trains are now operated at a considerable loss.

As to the additional burden which would be imposed upon our freight service by these laws, I will state that practically all of our through freight trains handle more than twenty-five cars, and these enactments would mean that an additional man would have to be put on all of these trains. The increased expense thus imposed upon the Mobile and Ohio Railroad Company alone, in the operation of its passenger and freight trains would amount to about \$5,833 per month, or about \$70,000 per year. This amount is equal to 0.7 per cent of the gross earnings of the Mobile and Ohio Railroad Company for the fiscal year ended June 30, 1909, and 1.06 per cent of our total operating expenses, exclusive of taxes, for the same year.

The expenses of this company have already been enormously increased by reason of federal legislation. I refer particularly to the acts of 1907, prescribing the hours of service for trainmen and telegraph operators.

I hardly think when these laws were passed that it was fully realized how far-reaching their effect would be, and the great extent to which the compensation of railroad employees, in the way of overtime, would be increased. Compensation for this character of overtime is not allowed on account of actual service performed, but is an extra allowance made on account of trains not reaching terminals within the exact limit prescribed by the law.

It seems clear that there is only one argument that can be advanced for increasing the number of men in train crews, from a public view point, and that must be based upon the idea that in this way accidents can be prevented. Unless these additional forces will accomplish this, there is an economic waste, the major part of which will have to be borne by the railroad companies, but some of which must fall ultimately on the purchaser of transportation, for if the bill is enacted rates received for transportation must be finally made sufficient to justify the increased cost.

The necessity and propriety of the full-crew bill, however, must finally rest upon the question as to whether or not it will reduce train accidents.

The Interstate Commerce Commission reports that over 80 per cent of the casualties on railroads are caused by negligence of employees, therefore a mere increase in the number of these employees on trains would not of necessity in any way decrease these accidents. Speaking from a practical railroad standpoint, I have never known of an accident that has happened on the Mobile and Ohio Railroad Company that could have been prevented by having an additional brakeman on the train.

In the operation of freight and passenger trains, a railroad company occupies a quasi public position, and any obstacle placed in the way of the safe and expeditious operation of trains affects the public as well as the railroad company.

It is often found necessary, after a passenger train has left a terminal point, for a coach or coaches to be added at some intermediate point for the accommodation of additional passenger traffic, the necessity for which may not have been known when the train left its initial station. Under the operation of this law it might not be possible to take on this additional equipment for the reason that as soon as the train exceeded the legal limit as to the number of cars to be handled with crew leaving terminal, additional cars could not be legally handled, thereby causing great inconvenience to the traveling public. This rule applies with even greater force to the operation of a freight train, as the exigencies of freight service as to picking up cars at intermediate points is much greater than that of passenger service.

In illustration of this, a train might start from a terminal point with less than 25 cars and be compelled to decline movement of additional freight, which might be of a highly perishable nature, on account of inability to secure an extra man en route. To be unable to pick up such cars, under the circum-

stances mentioned, would not only increase the expenses by making the running of extra trains necessary, but would cause considerable disadvantage to the shipping public, which always demands quick transportation.

Another objectionable phase to putting the additional man on freight trains is that he would be like a fifth wheel. Aside from imposing the additional expense, there is no real physical necessity for a third brakeman, and the reduction of freight trains to 25 cars is not only unprogressive, but it is a backward movement.

Thirty years ago, before the introduction of air brakes, a third brakeman might have been of material assistance on a freight train of 25 cars or more, but as the operation of stopping trains, since the inauguration of the air brake, has been taken entirely out of the hands of the train crew, the duties of brakemen on freight trains have been materially decreased, and it is inconceivable how the necessity for an additional brakeman has been created. In view of the physical conditions that exist to-day, this demand is unjustifiable from any standpoint.

The duties of the present freight-train crew are not in any sense of an arduous character, as compared to what they were a few years ago, and an additional member would only increase the spare time of the whole crew, which might result in making them less attentive to their duties, and might bring about a state of affairs conducive to accidents rather than otherwise.

It is unnecessary to state that in the daily operation of trains no one is better informed as to the necessity of insuring the safety of passengers and traffic than the officer who directs train movements and whose daily thought and constant endeavor is to safeguard the public, his employees, and the property he represents.

I trust you will pardon this lengthy communication, but the enactment of the bills, before referred to, as I view them, would be so objectionable, not only to the railroads of this whole country, but especially to the one that I represent, that I can not refrain from trying to impress upon you, with all the earnestness at my command, how little good they will accomplish and how much harm will result therefrom, and I hope you will use your good offices to have them defeated.

With best wishes, I am, yours, very truly,

R. V. TAYLOR.

JANUARY 17, 1910.

Mr. R. V. TAYLOR,

Manager Mobile and Ohio Railroad Company, Mobile, Ala.

DEAR SIR: I am just in receipt of your letter of January 13, relative to the Bear full-crew bill and the Dawson full-crew bill, and I frankly say to you that I am not at all disposed, as a member of the Interstate and Foreign Commerce Committee, to burden the railroads of the country down with additional employees who will not in any way increase the safety of the traveling public or facilitate the handling of freight.

When these bills come up before the committee I will most carefully look into their merits.

I am very glad indeed that you wrote to me giving me this information on the subject of the purpose and intent of the bills referred to.

Very truly,

STATEMENT OF G. A. HELLER, TRAIN MASTER, WESTERN DIVISION, NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.

As a little history of my experience which has extended over the past thirty-five years, beginning as telegraph operator, and acting as train dispatcher, chief train dispatcher, train master, and division superintendent.

The recognized full crew of the New York, New Haven and Hartford Railroad Company consists of an engineer, fireman, conductor, flagman, and one brakeman. Any instance where the work at stations

demand, to facilitate the station work, additional men are added to crews on what we term, "drop and pick up trains;" that is, trains that set off and pick up carload lots, which we give an extra brakeman, making the crew, conductor, flagman, and two brakemen.

On our local freights we place a conductor, flagman, and two brakemen, and during the heavy seasons of the year an additional brakeman. This is on account of the heavy amount of loading and unloading of package freight in addition to the switching at local stations, but the extra man above the conductor, flagman, and one brakeman is in no instance put on the train as a safety precaution, it being considered that the conductor, flagman, and head brakeman are all that are necessary to safely handle the train.

Our trains are all equipped with air from the engine to the caboose, with safety valves in the caboose, making it possible for the conductor or brakeman in the caboose to stop the train in case of accident as readily as can the engineer from the engine. The head brakeman rides the engine, the rear brakeman or flagman the caboose, the conductor either the caboose or the engine as conditions require, except on our descending grades.

On the particular division where I am employed we have several $1\frac{1}{4}$ per cent grades of from 6 to 12 miles in length. The head brakeman is on top of the head end of the train going down these grades and operates retainers. The train is handled entirely by the engineer down these grades by the use of air with the assistance of one brakeman on top with the retainers.

Should the proposed bill become a law it would mean an additional expenditure to the New York, New Haven and Hartford Railroad Company of approximately \$200,000 per annum for which they would receive no benefit, as the extra trainman which the law would require to be furnished each train would simply either ride the engine or the caboose and have no duties to perform. These figures are arrived at by adding one man to each crew, as called for in the proposed law, which at present does not consist of the conductor, flagman, and two brakemen.

I have never been called upon by the trainmen or their organizations for additional help on trains except in the matter of the fourth man on the local freights, where, in one or two instances, he had been taken off during the slack business, and when the handling of package freight became heavy the conductors on these particular trains asked for an additional man, which was promptly given him. This instance, however, would not be affected by the "full-crew bill," so called, as the crew already has as many men as the proposed bill calls for.

In reference to the matter of where this extra man would ride, and the statement made by Vice-President Smith, of the New York Central, as to the regular army being necessary to keep the men out on top of the train, I wish to state a little personal experience. A few years ago I was connected with a railroad in New York State as train master. At that time a freight-train crew consisted of engineer, fireman, conductor, flagman, and three brakemen; in other words, four brakemen on the train. A rule in the instruction book directed that brakemen would be required to ride out on top. After a time we had a new division superintendent. About the first thing this new superintendent noticed was the fact that the brakemen were

not complying with the rule to ride upon the top of the train. He issued a bulletin notice to the effect that at least one man would be required to ride on top of the train at all times, and instructed me, as train master, to see that it was carried out, and I want to say now that right here is where my troubles began. It was but a matter of a few days before I was waited upon by a committee of the brotherhood of train men objecting to the order. Not being empowered to make any concessions, the matter was carried to the superintendent, and so on to the highest operating officers of the company. This of course took some weeks, during which time some personal friends of mine inside the organization informed me that unless the order was rescinded the railroad would be tied up. It operated some 2,200 miles of road. As a final outcome of the matter the order was rescinded; in other words, the men won out; they were not required to ride on top of the train. As mentioned above, our train crew at that time consisted of four brakemen besides the conductor, and they were handling a maximum of 85 cars to the train. Since that time the number of men on the train has been reduced to a conductor and two men. They are still handing the 85 cars, and doing it successfully. I merely mention this to show that this extra man, if allowed by the law, does not expect and will not place himself at any point on the train except in the engine or the caboose while riding over the road, and we consider that with one brakeman on the head end and one on the rear, and the conductor, either on the head or rear of the train, we have all the supervision that is necessary to safely move our trains over the road.

In looking over the record of accidents on the New Haven Railroad for the past three years, there has been no case where an additional man on the train would have prevented the accident, or where the absence of train men in any way contributed to its cause.

STATEMENT OF MR. JAMES C. LINCOLN, PRESIDENT NATIONAL INDUSTRIAL TRAFFIC LEAGUE.

The CHAIRMAN. You may proceed, Mr. Lincoln. Have you any idea how many gentlemen will be heard through or from your association?

Mr. LINCOLN. Why, Mr. Chairman, I will say that they probably expect me to make the representations for all of them, and I do not know of anyone else that wishes to speak upon the subject, except it may develop through the course of the hearings or in answer to any questions that may be asked.

The CHAIRMAN. The only thing I was trying to get at was to have some idea as to the time you will require.

Mr. LINCOLN. We want to give you all the information possible and all that you may want.

The CHAIRMAN. How long do you apprehend you will wish to occupy?

Mr. LINCOLN. My time will not be more than an hour.

The CHAIRMAN. Of course, we will assume that it will be several times that, if we are to judge from the time taken by the other gentlemen who have appeared before the committee. What I wanted was to determine as to the future hearings of the committee; however, we will determine that later on and you may proceed.

Mr. LINCOLN. There are some other features incorporated in the bill on which I would like to be heard—some features that have not been presented to you as yet, and I want to make a representation on the part of the league.

The CHAIRMAN. We would be glad to hear you on any feature of any of the bills.

Mr. LINCOLN. Mr. Chairman and gentlemen: Merely by way of introduction, I want to state that our committee is a committee—

The CHAIRMAN. Won't you please give your name to the stenographer and the associations you represent.

Mr. LINCOLN. My name is James C. Lincoln, president of the National Industrial Traffic League and Commissioner of the Merchants' Exchange of St. Louis.

The CHAIRMAN. And your address?

Mr. LINCOLN. St. Louis, Mo.

The CHAIRMAN. What is the National Industrial Traffic League?

Mr. LINCOLN. It is an organization of shippers and represents a number of subordinate organizations. It embraces in its membership ten or more national organizations, such as the Hardwood Manufacturers Association of the United States, the National Association of Stove Manufacturers, the National Association of Automobile Manufacturers, the National League of Commission Merchants, the National Lumber Manufacturers Association, the National Candy Company, and others. It also has embraced within its membership ten or fifteen state organizations, and, at random, some of them are the Illinois Grain Dealers Association, Illinois Manufacturers Association, Iowa State Manufacturers Association, Kansas Grain Dealers Association, Michigan Manufacturers Association, Missouri Manufacturers Association, Ohio Shippers Association, Western Grain Dealers Association, Western Fruit Jobbers Association, Western Association of Shoe Wholesalers. It also has embraced in its membership commercial organizations from the principal cities of the United States—from Boston, New York, Baltimore, and Philadelphia on the Atlantic coast to Los Angeles, Sacramento, San Francisco, Portland, and Seattle on the Pacific coast; Duluth, Minneapolis, Billings, Mont., upon the north; Houston, New Orleans, Atlanta, Montgomery, and Fort Payne on the south; in addition to such cities as Buffalo, Toledo, Indianapolis, Louisville, Cincinnati, Chicago, Milwaukee, Minneapolis, Omaha, Kansas City, St. Louis, Montgomery, Memphis, Little Rock, and others too numerous to mention; Denver and Salt Lake City.

The CHAIRMAN. You refer to it as a traffic association. I suppose it is representative of the traffic men and shippers—the traffic representatives of shipping concerns?

Mr. LINCOLN. The representation in the concern is largely traffic men representing those organizations; for instance, the Merchants Exchange of St. Louis is represented in the National Industrial Traffic League through its commissioner himself.

The CHAIRMAN. What are the general purposes of the league?

Mr. LINCOLN. To cooperate with railroads in all transportation matters and to cooperate with the Interstate Commerce Commission in regulations affecting transportation, and, if necessary, to secure necessary amendments of the law, either state or national. In addition to the commercial organizations I have mentioned I might state

that we have embraced in our membership probably 125 of the leading industrial firms in the United States, representing a total of about 80,000 shippers. I will leave with the committee four copies of a pamphlet, in which are set forth the purposes of the league in the by-laws.

The CHAIRMAN. How long is the paper that you have there? Is it too long to be printed in the record?

Mr. LINCOLN. Well, it contains the membership I spoke of as well as the by-laws of the league.

The CHAIRMAN. You may give one copy to the stenographer and it will be printed.

Mr. ESCH. Have you had any experience with regard to traffic management on railroads?

Mr. LINCOLN. I entered the railroad service in 1876 and left it in 1906.

Mr. ESCH. What lines?

Mr. LINCOLN. I had thirty years of railroading experience through the traffic department; at the time I left I was assistant freight traffic manager of the Missouri Pacific system; I have been through all the traffic departments. Mr. Chairman and gentlemen: I desire to address your committee on four propositions that have been considered at great length by the National Industrial Traffic League. They are not matters which have just come before us incidentally, but have been discussed, have been considered in connection with the Interstate Commerce Commission, and have been considered by counsel. The result of our deliberations, I find, are embraced in H. R. 17536, and upon those features—

The CHAIRMAN. That is the Townsend bill?

Mr. LINCOLN. Mr. Townsend's bill. They are also incorporated in other bills, but being somewhat concentrated in that bill I am desirous of talking from that bill's standpoint. The first matter on which I desire to address myself is section 8, page 14, in regard to the quotation of rates. The shipping public are constantly meeting with losses by reason of erroneous quotations upon the part of the carrier's agents. We have all had the experience of erroneous quotations, different quotations over the same line from different representatives of the same line. What can this mean other than that the tariffs are not comprehensive and plain in their terms? The railroad companies' representatives make up the tariffs, the multiplicity of which and the arrangement thereof make it impossible for the average shipper to determine from the tariffs themselves, as on file at the stations, the legal rates; while shippers, under the law, are governed by the legal rates provided for by tariff, but in the preparation of which they have no voice, the shippers have to rely upon the agents of carriers for their quotations.

We feel, therefore, that some provision should be made by which the shipper will be insured the quotation of the proper rate. In order to secure faithful performance, by the exercise of more care on the part of the carriers' agents, and a quotation upon which shippers may rely, we hold that a provision should be established by law requiring carriers' agents, upon demand, to quote rates in writing, and as an incentive for the procuring of proper quotations in conformity with the legal rate there should be a provision treating erroneous quotations as a misdemeanor, the fine to revert to the

Government. We recognize that to require the carrier, in the event of erroneous quotations, to refund the difference between the legal rate and the erroneous rate should not be permitted, as this might lead to collusion and be a rebate in another form. The erroneous quotation does not, in all instances, operate to the damage and injury of the shipper; therefore we think the fine should be made not purely on the question of erroneous quotations, but for damages that may be sustained. Having a written quotation, upon which transportation is engaged upon and contracts made, if damage results by reason of the quotation being an erroneous one, then we believe that upon proper proceedings in court by civil action the actual damages should be recoverable. It is therefore urged that the commerce act should be so amended as to provide for quotations in writing as *prima facie* evidence of their legality. In that connection, in regard to erroneous quotations, if it is desired I can place a number of communications in the record, but I would like to refer to a few that have come from various sections of the country. I will refer first to G. H. Bushnell Press Company, of Thompsonville, Conn.; they report a case of an erroneous quotation by which they were damaged by reason of the laxity on the part of the carrier in making its quotations. I can, if desired, file the communication with the committee.

The CHAIRMAN. How long is it?

Mr. LINCOLN. It is a page; but I have numerous cases that might be recorded.

The CHAIRMAN. I would suggest that while we do not want to encumber the record with a great number of those cases, unless there is something very special about them all, we would be glad to have some of them as fair illustrations.

Mr. LINCOLN. I think these are fair, and I want to present them to you so you can realize the cases referred to.

Mr. ADAMSON. He can file a list of all of them.

Mr. LINCOLN. I can leave all of these documents with your committee and you can refer to them, and it will not be necessary, in that case, to make them a part of your record.

The CHAIRMAN. We are not likely to look at them unless they are printed in the record.

Mr. LINCOLN. The Bushnell matter involved a shipment to New Orleans. Here is a case reported from Duluth, Minn., involving a shipment from Oakland, Cal., to Duluth. I have quite a number of them. I have picked out some from various sections of the country, so they can be referred to as to what is existing in the different sections. The Hummer Construction Company, of Marion, Ohio, on a shipment from a point in Missouri to Pennville, Ind. The Merchants & Evans Company, of Philadelphia, Pa., involving a shipment from Galveston to Texarkana.

Mr. TOWNSEND. In a general way, is that damage caused by under-stating a rate?

Mr. LINCOLN. Some of them are overstated. The rate, in the cases of erroneous quotations that I want to show you, is sometimes too high and sometimes too low. I have another from the Merchants & Evans Company, Philadelphia, in regard to a shipment from Baltimore to Topeka, Kans. Another one from the Ypsilanti Reed Furniture Company, of Ionia, Mich., in regard to quotations from

the Pere Marquette Railroad Company to various points in Texas. The loss involved was \$250. Another case is that of Hall & Sons, Buffalo, N. Y. Another case is that of Hunter Brothers Milling Company, and a number of cases are cited. I have a great many more, but I hardly think it necessary to burden the committee with them.

Mr. TOWNSEND. Where there is an underquotation of a rate how can the shippers sustain damage?

Mr. LINCOLN. By the failure to make the sale, by reason of a lower quotation being made to some one else or to some one better informed as to what the tariff is, and being able to make the sale on a lower rate.

Mr. RUSSELL. Have you, from your investigations, ascertained how these erroneous rate quotations come about?

Mr. LINCOLN. How they come about?

Mr. RUSSELL. Yes. What causes the error in the statement—is it due to negligence or what?

Mr. LINCOLN. Part of it is through an incompetent party in charge of the tariffs making the quotations, part of it is due to the necessary complications in all our transportation systems and rate systems, and the manner of publication. That is one thing I wish to bring before you.

Mr. ESCHE. In case a rate is overstated to a shipper and he discovers it and seeks reparation, has settlement been readily and speedily adjusted?

Mr. LINCOLN. It has not been in the past, but I want to say, to the great credit of the railroad companies, that there is a very marked improvement in the adjustment of claims, particularly claims for overcharges.

Mr. HUBBARD. Do they ever contest their liability in such cases?

Mr. LINCOLN. Not as against the legal tariff, where the quotation was in excess of the legal tariff rate; where the quotation is less than the legal tariff rate they say they can not apply other than the legal tariff rate. There is recourse, of course, in the event that a quotation and shipment were made on the higher rate. The shipper has the right to recover back the amount of the overcharge.

Mr. HUBBARD. Except in that case, it is your understanding, as the law now is, that the shipper is without remedy?

Mr. LINCOLN. Without remedy.

Mr. HUBBARD. This bill, as drawn, provides that in the case of such erroneous statement as to rates a penalty shall be recovered by the United States?

Mr. LINCOLN. Yes, sir.

Mr. HUBBARD. Can you suggest any provision for the benefit of the shipper who may suffer by that?

Mr. LINCOLN. I am not an attorney, although I have consulted a number of attorneys in the case of erroneous quotations, where the quotations were less than the legal rate, and they have held that the shipper could recover by a civil action if he could show that he was damaged by reason of erroneous quotations, but he will have to prove his damages.

Mr. HUBBARD. The question arises whether there ought not to be in this bill, if passed, some provision that would enable the shipper to recover his damages?

Mr. LINCOLN. Some of the attorneys whom we have consulted say that we have a remedy at law by civil action.

Mr. HUBBARD. That has not been tested, as you understand?

Mr. LINCOLN. It has not been carried to the higher courts; the lower courts have awarded damages to the claimants and those awards have never been carried to the higher courts.

Mr. RUSSELL. Would you think it proper to insert a provision providing a certain amount of damages to be awarded to the shipper, say \$500 or \$1,000, where damage had arisen by reason of erroneous quotations?

Mr. LINCOLN. I think that would be an unjust hardship upon the railroad, because the erroneous quotation might only represent \$4.

Mr. BARTLETT. What do you mean by an erroneous quotation? If a rate is established from one place to another and such a rate is published and advertised, in what way can that be erroneous?

Mr. LINCOLN. For example, we have a shipment, I will say, from St. Louis to Atlanta, Ga.; now, I am unable to examine the tariffs and am unable to get that rate, and we believe it is the duty of the carrier to prepare the tariffs and quote the rates.

Mr. BARTLETT. I agree with you.

Mr. LINCOLN. And we want some protection in that respect; to presume that the shipper has knowledge of the rate is a considerable presumption, because he can not tell.

Mr. RUSSELL. Now, coming back to the question I propounded to you. The point I want to direct your attention to is: Do you favor a measure which would allow the shipper, in case of an overcharge (in addition to the penalty provided in section 8, which the Government shall recover) to recover a penalty in his behalf?

Mr. LINCOLN. My own judgment is there should be a provision, possibly in this act; but it ought certainly to be cleared up that the shipper has a right to recover damages sustained by reason of an erroneous quotation, but he must prove his damages, and that recovery should be by civil action in a court.

Mr. RUSSELL. You think the recovery of the shipper ought to be limited to that?

Mr. LINCOLN. I think it is very proper to limit it to that. I would say that as far as my constituents are concerned we are operating in that way and have recovered damages.

Mr. BARTLETT. You speak about damages. Do you mean that there ought to be a penalty for an erroneous quotation, when the rate quoted is more than the published rate?

Mr. LINCOLN. I think there should be a penalty against the carrier for an erroneous quotation, a misstatement of the rate, which would go to the Government; that is, to insure our getting more correct quotations. If a shipper has been damaged by reason of erroneous quotations, he must prove his damages.

Mr. BARTLETT. Now, the court, in fixing the measure of damages, would fix as the measure of damages the excess rate charged over the published rate.

Mr. LINCOLN. That would be the maximum.

Mr. BARTLETT. The provision in this bill provides that the penalty is to be recovered by the Government. How would that be of any service to you?

Mr. LINCOLN. The service we expect to obtain under the proposed amendment is more correct quotations: better service.

Mr. BARTLETT. I am simply trying to draw your attention to the fact that unless the bill changes the rule as to damages the court would ordinarily fix the excess as the measure of damages, and you would not be any better off than you are now, because you now have the right to recover that.

Mr. LINCOLN. We will be better off because we will get proper quotations, and it places a duty upon the carrier to make the quotations.

Mr. KENNEDY. If the shipper is allowed to collect or have a claim for damages, where the rate was quoted too low, wouldn't that open the door for discrimination, favoritism?

Mr. LINCOLN. If the railroads were permitted to refund the difference?

Mr. KENNEDY. Wouldn't it be apt to lead to collusion or rebating?

Mr. LINCOLN. I have stated it would. But if a man is to recover damages by civil action I do not think there can be any collusion there.

Mr. KENNEDY. Well, he could confess judgment, and the Government would never hear about the misquoted rate.

Mr. LINCOLN. Well, I hardly think they would want to put anything on the public record where there had been any collusion; I do not think there is much danger of that sort of thing.

Mr. ESCH. This provision, in section 8, states that the shipper can get a statement as to the proper rate and that it shall be furnished him within a reasonable time. Now, wouldn't it be better to have a maximum, say, not exceeding so many days, instead of using the words "reasonable time?"

Mr. LINCOLN. I think probably it would; yes, sir.

Mr. ESCH. Is there any reason why the agent of any carrier could not, by the use of the telegraph, get the exact quotation within a few hours?

Mr. LINCOLN. Well, they can get it within forty-eight hours.

Mr. ESCH. By using the words "reasonable time" you might delay matters, and that might be to the detriment of the carrier.

Mr. LINCOLN. I think that a reasonable time, but not exceeding forty-eight hours, would be a very wise provision, myself.

Mr. TOWNSEND. Do you anticipate there would be any difficulty as to the interpretation of a reasonable time?

Mr. LINCOLN. I do not anticipate there would be any difficulty.

Mr. TOWNSEND. What you are trying to establish, what you favor, is the correct quotation of rates?

Mr. LINCOLN. Ye, sir; that is what we are after, because it is a fact that no ordinary man can tell what the rate is.

The CHAIRMAN. As to that question of a reasonable time, who would determine whether it was a reasonable time or not?

Mr. LINCOLN. Well, that term is used so often it is rather confusing, but I think it could be determined.

The CHAIRMAN. Is there any way of determining what is a reasonable time until the thing has happened, until you go to a jury and let the jury determine the question of fact?

Mr. LINCOLN. Probably the circumstances would have to be detailed at that time, to say whether they had furnished the information within a reasonable time.

The CHAIRMAN. I believe one of the distinguished members of the United States Supreme Court has decided that you can not bring a criminal action upon the term "reasonable," yet this might be a little different.

Mr. LINCOLN. We are not seeking to punish the railroads, we are seeking for better service, for correct quotations, and by this act require the railroads to make the quotations instead of having the railroads say to the shippers "There is a tariff, go get it."

The CHAIRMAN. As I understand this proposition in section 8, it would first provide for the giving of rates upon the line of the carrier itself, which are easily ascertained by the carrier?

Mr. LINCOLN. Yes, sir.

The CHAIRMAN. Then it provides for the giving of rates upon any other routes where traffic agreements or schedules have been filed? That through rate might extend over a number of different roads.

Mr. LINCOLN. Yes, sir.

The CHAIRMAN. Isn't it quite often the case that it is impossible for one carrier to tell in advance what charges there may be over some other road? Isn't it the experience of the shippers that, as a rule, the difficulty arises over some unknown charges?

Mr. LINCOLN. The great difficulty, Mr. Chairman, arising in regard to the quotations is the fact that the agents do not sufficiently inform themselves as to the rates on file in their own stations. Now, where the shipment is to be covered by a joint tariff over other roads that tariff should be filed at the station. That is the requirement of the law. Sometimes it is necessary for that agent to communicate with some officer to get the correct information as to the rate to be charged.

The CHAIRMAN. I occasionally have amused myself by examining the tariff sheets filed, which are more difficult to me than Greek to understand. Now, you assume that the agent at some place must understand that tariff sheet as applying to some railroad miles away and must know its charges?

Mr. HUBBARD. Isn't this limited to the schedules or tariffs to which such carrier is a party?

Mr. ADAMSON. Do you think a carrier has complied with its duty if it files a schedule that a person of common understanding can not determine at all? Do you believe that a carrier has discharged its duty by filing a schedule in such language and figures that a person of common understanding can not determine at all?

Mr. LINCOLN. I have been a railroad man for some time and I know it is pretty difficult to understand a tariff, that is, to a man who is unacquainted with the methods of its construction; it will not be very easy for such a man to look up a rate. However, the tariffs are drawn up in a systematic way: there are indexes, locations, and everything referred to.

Mr. ADAMSON. Well, if you suffer by a misquotation of the rate it will never hurt you if you never find it out. If you find it out afterwards, then, of course, it does hurt.

Mr. LINCOLN. Well, you usually find it out in some way; we find out in the case where we are unsuccessful in disposing of our goods. The question I am speaking of is where a quotation has been made lower than the tariff rates.

Mr. ADAMSON. Well, before you know you have suffered you have got to find out in some way what the rate was or you will never know it was a misquoted rate.

Mr. LINCOLN. If I am unsuccessful in selling my goods, based upon a quotation given by an agent, and it afterwards develops that there was a lower rate and my competitor was furnished with that lower rate and sold his goods, then I am injured.

Mr. ADAMSON. The point is, you have got to learn in some way what the rate was; you have got to learn in some way that it was higher if you are going to be hurt.

Mr. LINCOLN. Yes, if the misquotation is higher.

Mr. ADAMSON. I understand. But it will never make any difference whether the rate is lower or higher, if you never find it out?

Mr. LINCOLN. Well, we do find it out, when a rate is made lower than that which was given to us, because if a rate is quoted to us and we make a sale and send the goods forward at a rate of 10 cents per hundred pounds and we learn afterwards that we are to be charged 15 cents a hundred pounds, we know immediately we are injured.

Mr. BARTLETT. Ordinarily the consignee pays the freight bill?

Mr. LINCOLN. Usually.

Mr. BARTLETT. Ordinarily; yes.

Mr. LINCOLN. Usually.

Mr. BARTLETT. And in quoting prices to your customer at a distance you quote them after taking into consideration the freight?

Mr. LINCOLN. Ordinarily the freight is taken into consideration; yes, sir. However, if the consignee pays more freight than was anticipated he deducts it from the invoice.

Mr. BARTLETT. Now, if you ship this carload, or train load, or whatever it is, to Macon, Ga., we will say, and the consignee believes he is to pay 10 cents a hundred pounds, and when the car gets there he finds he must pay 15 cents a hundred pounds, how does that affect you?

Mr. LINCOLN. He deducts the 5 cents when he sends in his remittance.

Mr. BARTLETT. Because you have made the sale with a view of his having to pay but 10 cents per hundred pounds?

Mr. LINCOLN. Exactly.

Mr. BARTLETT. And then if some other competitor, who happened to be given the correct rate, sells some other man the same class of goods, based on the freight rate of 10 cents per hundred pounds, and you find that out, you think you are discriminated against?

Mr. LINCOLN. Yes, sir.

Mr. BARTLETT. That is your complaint?

Mr. LINCOLN. Yes, sir.

Mr. RICHARDSON. You publish all your rates, don't you—you give notice of them?

Mr. LINCOLN. I am a shipper. The railroads publish them. Here is an illustration of what they publish [exhibiting book to committee]. I defy any man in this room to give me a quotation on an

ordinary shipment I might ask for under that tariff in one-half hour.

Mr. HUBBARD. Can you?

Mr. LINCOLN. Yes; because I am in touch with the tariffs every day.

Mr. HUBBARD. Can the agent do it in a half hour?

Mr. LINCOLN. The agent who is informed upon it and handles the business is supposed to be able to make a quotation.

Mr. HUBBARD. Is he supposed to be so informed as to all the data in that bulky tariff as to answer any inquiry that may be made?

Mr. LINCOLN. Yes, sir; because he deals with it every day.

Mr. MILLER. Isn't it his business to be informed?

Mr. LINCOLN. Yes, sir; it is his business to be informed. I can give you these books, four tariffs from which to make a quotation, and in order to make a quotation to Texas, for example, you will have to refer to four different publications, and the shipper does not know where they are. I can give you these four tariffs and I do not believe you can make a quotation in a half hour.

Mr. RICHARDSON. I should like to ask you some questions. If you are not a railroad man it may be well for you to answer them.

Mr. LINCOLN. I have had a railroad experience of thirty years.

Mr. RICHARDSON. The rates you publish, of course, and stick them up in public places. If the shipper desires to get specific rates from you is he expected to give notice to you? Must he say to the railroad company "I am going to send, or want you to send, a shipment to one place or another, and I want the rate bearing on that?" Is that what he is required to do?

Mr. LINCOLN. Yes; under the proposed amendment of the law he is required to do that if he wants that information.

Mr. RICHARDSON. Doesn't that subject the common carrier to a great deal of inconvenience, to collect and furnish that information? You can find these rates sticking up in the various stations and you can look at them and get your own figures.

Mr. LINCOLN. No, sir; we can not do it; it is impossible for the average shipper to go into a station and get a rate himself, and it is impossible for the average railroad man to go into somebody else's station and get a rate.

Mr. RICHARDSON. When a person makes an inquiry of you, you give him the correct rate and you then send his shipment, under the present law, over any road you please, or does he select the route?

Mr. LINCOLN. That is under another section, but the shipper can select the route if he so desires and get a quotation for that route.

Mr. RICHARDSON. I am asking for information. Isn't it sometimes exceedingly inconvenient to the railroad to send the shipment by the route the shipper directs or selects?

Mr. TOWNSEND. That comes in later; that we are not discussing now; we are now discussing the quotation of rates.

Mr. RICHARDSON. I understand that, but I thought you were taking up the whole bill and everything that comes along with it.

Mr. ADAMSON. Under the existing régime the rates are published by the carrier, but don't you think, in order to make the law valuable, that the publication of those rates ought to be in such language and figures as the ordinary person can understand?

Mr. LINCOLN. I would say as to that that I think that their publication should be made just as plain as it is possible to make it. The whole efforts of the Interstate Commerce Commission and the efforts of the railroad companies are directed to that end to-day; and the marked improvement that has been made in the publication of rates to-day, as compared with five years ago, is an evidence of the movement in the right direction.

Mr. ADAMSON. I would insist that that be done. I should think the business man ought to be able to understand all of them.

Mr. LINCOLN. I think it can be, and I believe that I might say that Mr. Belleville, who is a traffic man and makes a study of tariffs, can definitely quote a rate out of these tariffs.

Mr. STAFFORD. At the present time have the railroads in their employ a man who is engaged in the work of furnishing quotations on through rates over other railroad systems?

Mr. LINCOLN. Yes, sir.

Mr. STAFFORD. Have all the railroads in the country men engaged in that character of employment?

Mr. LINCOLN. I wouldn't say that all of them have; some of these very small lines, connected with trunk lines, possibly have not complete information of all the tariffs, but they have their means of getting information; they can get it through their connections.

Mr. STAFFORD. Under this provision, or this section, it would be obligatory on the railroads, on request, to furnish a quotation on a through rate?

Mr. LINCOLN. To quote it within a reasonable length of time; yes, sir.

Mr. STAFFORD. What is the practice to-day, among large shippers, as to ascertaining for themselves, or through inquiry, as to through rates?

Mr. LINCOLN. To apply to the agent or to the general officer or division officer of the line upon which it is located or from which he may wish to make the shipment.

Mr. STAFFORD. Do any of the large shippers have in their employ traffic agents who are able, by reason of the tables before them, to ascertain for themselves, if they are experts, what the through rate is?

Mr. LINCOLN. Yes, sir; they have.

Mr. STAFFORD. How generally is that in vogue?

Mr. LINCOLN. Well, the large industrial shippers, nearly all of them, have experts; they have a man who makes it his business to study the rates and secure the rates; the smaller shippers do not.

Mr. STAFFORD. In those cases, where they have employed some special men to pass upon through rates, is it the practice in those instances for those men to also supplement their investigations by making inquiry of the railroad company as to the through rate?

Mr. LINCOLN. I will speak of my own experience. I am commissioner of the Merchants Exchange of St. Louis and we have in our membership about 1,500 members; we have an active membership of about 250, and they call at my office for rates and I try to furnish them from my office records; I do that, and I rely upon my records because railroads are furnishing me with their tariffs, and I do not ask for the rate of a carrier whenever my tariffs are up-to-date, as they are; I keep them up-to-date; and where the tariffs I have are

issued, and the time in which a change can be made in those tariffs has not elapsed, I rely upon them. If I have a tariff, for example, which is dated January 1, filed with me by the railroad company, given me as a matter of courtesy, I know that is the legal rate for thirty days, and I will quote it without asking them any questions; if I have reason to doubt a tariff then I ask for confirmation from the railroad; and I will say that so far as my experience in St. Louis is concerned the railroads have asked for confirmation of rates from my office.

Mr. STAFFORD. What is the practice of the railroads as to furnishing the various shippers with copies of the rates as issued?

Mr. LINCOLN. They do not furnish them except to a limited extent; the large shippers receive tariffs and the smaller shippers do not.

Mr. STAFFORD. Do they decline to furnish them upon request?

Mr. LINCOLN. I would not say they decline to furnish them upon request; no, sir. But ordinarily the small shippers would not know how to use them if they had them.

Mr. STAFFORD. You know of no instance in which they have declined to do that?

Mr. LINCOLN. I have always found every railroad, whenever I have asked for a specific tariff, ready and willing to give it to me.

Mr. STAFFORD. Do you know of any instance where railroads have refused to furnish their published rates to large shippers as they are published serially?

Mr. LINCOLN. There are some cases where the carriers have declined to furnish certain publications unless they were paid for them. They would render you a bill for a certain tariff. A tariff such as I hold in my hand now would cost probably 35 cents a copy. They do furnish those to reputable shippers, and a tariff such as I hold in my hand would probably cost about 25, 35, or 50 cents.

Mr. RICHARDSON. Is it the custom of railroads, whenever demands are made upon them for a set of rates, to send a man with one of those books that you hold in your hand?

Mr. LINCOLN. No, no.

Mr. RICHARDSON. If he pays for it they will send it?

Mr. LINCOLN. Yes, sir.

Mr. RICHARDSON. Without paying for it, then, what kind of information would be given a man that is asking for the rate?

Mr. LINCOLN. They will quote him a rate or refer him to the agent to get the rate.

Mr. RICHARDSON. You do not furnish those books free?

Mr. LINCOLN. The railroads do not furnish those books to everybody; no, sir. If you would put it into the hands of some small shippers, they would not know what to do with it, ordinarily.

Mr. BARTLETT. When a salesman goes out into the country and sells a farming implement, a stationary engine, or anything of that sort that a farmer needs, he ordinarily has with him a book containing quotations of rates from Chicago, Toledo, or anywhere else, and he says to the farmer, "I will sell you this for \$200 or \$300," according to the rate of freight; it may be \$50 or it may be \$75. Now, the article is shipped on that line and when it arrives it is found that the freight rate is more than the rate supposed to be charged; it is no fault of the man who is to receive the implement, or whatever it is, nor is it the fault of the railroad at the initial ship-

ping point. I know that there was a sawmill sent down into my State and it was to cost so much, and the freight was to be \$75. When it got there it was found that the rate was \$125. Now, what provision does this bill make with reference to that, when a man quotes the rate of the road at the initial point of shipment? What are you going to do with a case like that?

Mr. LINCOLN. The quotation should have been made for transportation clear through from the initial point; if you want to rely on a quotation you must have a quotation to cover from the initial point to destination. There was some error on the part of the salesman in not having the proper rate clear through. The party at the initial point is responsible for the rate, provided it is the legal rate, I mean.

Mr. ADAMSON. Well, we will say he did furnish him with the legal rate.

Mr. LINCOLN. If he furnished him with the published rate and then sent the business by some other route, that would not be the proper rate. However, I would like to know the exact facts in a case of that kind.

Mr. BARTLETT. I have stated them exactly, and the amount of excess freight was very properly deducted from the bill.

Mr. LINCOLN. You had a right to do that on that basis.

The CHAIRMAN. Have you finished your original statement on this proposition?

Mr. LINCOLN. Yes, sir; except that I want to refer to these particular tariffs.

The CHAIRMAN. We will not publish those tariffs in the hearings?

Mr. RICHARDSON. I want to ask another question: Does it occur, or have you ever known it to occur, that a shipper of property from one State to another, some distance, can pay the railroad freight bill in advance, and when it gets to the consignee at its destination he will be confronted with a statement that there has been a mistake made and that there are additional charges due?

Mr. LINCOLN. That frequently occurs.

Mr. RICHARDSON. Well, explain to me how that occurs. When I go to a station agent and go to ship things from that point to the south, or somewhere else, and I say I want to pay the freight in advance and he gives me a receipt for the amount, and it so happens that the consignee, at the point of destination, must pay additional charges—please explain how that happens? I know, of course, that if the property has not been delivered it will stay there until I pay the additional charges, but if the property is delivered to me before I am asked to pay additional charges nothing additional must be paid.

Mr. LINCOLN. The only explanation I have of that is to say that they have used an erroneous rate in arriving at the prepaid charges at the point of origin. Now, when the delivering agent, who is ordinarily the responsible agent, held by the carriers for such property, checks the bill and he finds an erroneous rate was used, the proper rate being, we will say, 20 cents a hundred instead of 15 cents a hundred, then it is the duty of the delivering agent to see what the proper charge is, and then make out a supplemental bill for the additional amount necessary to make the correct rate.

Mr. RICHARDSON. Then it is the fault of the agent at the initial point?

Mr. LINCOLN. Yes.

Mr. RICHARDSON. Then, according to all equity and justice, he ought to be held by his own company for the mistake; but they always make the consignee pay the additional charge, provided the goods have not passed out of the possession of the delivering agent.

Mr. LINCOLN. Yes.

Mr. RICHARDSON. If it has not been delivered the legal transportation charges, I suppose, are levied upon the property until the legal charges have been paid. Now, how do you suppose that can be remedied? What is your suggestion?

Mr. LINCOLN. It can not be remedied, to my mind.

Mr. RICHARDSON. You could get more competent men, could you not?

Mr. LINCOLN. More competent men, or have men especially up to date to do that work.

Mr. RICHARDSON. But you say the thing to which I have referred frequently occurs.

Mr. LINCOLN. Yes, sir; quite often.

Mr. RICHARDSON. And it ought not to occur.

Mr. LINCOLN. I merely want to present for the information of the committee these tariffs. There is one set of tariffs; I have made a set complete necessary to get a rate, and I have given an illustration on the title-page.

The CHAIRMAN. The committee can not make any use of them. The thing to do is to make a statement that can be read by the committee. The committee can not print those tariffs, although some members of the committee may be glad to have them left here in order to refer to them. If you have any information that relates to them, showing the difficulties—if you will make a statement that can go in the record, we will be glad to have it; in that way we can get some benefit.

Mr. STAFFORD. Might it not be well to have him leave those books here, after he has made his explanation?

The CHAIRMAN. There is no objection to his doing that. May I ask you a few questions on this subject? Your proposition in section 8 of this bill covers, first, as I understand, only the question of tariffs upon the line of the road itself and where there is a through rate for which tariffs have been filed?

Mr. LINCOLN. Yes, sir.

The CHAIRMAN. It does not apply to the shipment where the through rate is not on file and not made up by adding together the sum of the local rates; is that correct? Where any through tariff sheet is filed the section has no application?

Mr. LINCOLN. I don't so understand it. I understand they have got to quote you what is the legal rate between the points from which the shipment is going to go—from the point of shipment to the point of destination.

The CHAIRMAN. What I want to get at is your view of the matter. Section 8 says: "A rate or charge applicable to a described shipment between stated places under the schedules or tariffs to which such carrier is a party." Now, the carrier is not a party to any schedules or tariffs unless it has either a schedule or tariff on its own line,

or schedule or tariff on a through line where it has joined in making a schedule, as I understand it. Is not that correct?

Mr. LINCOLN. I think it is; yes, sir.

The CHAIRMAN. In your judgment, would it be desirable to have the railroad agents, on application, furnish a statement of what the rate shall be from that point to any other point in the United States?

Mr. LINCOLN. I think they ought to be required to quote the rate that will apply to the shipment from point of origin to destination.

The CHAIRMAN. In the bill which I introduced the provision is that railroad companies shall furnish a written statement of the rate at which any kind or class of property may be transported between any points governed by the provisions of the act to regulate commerce, which rate shall be based upon the proper tariff or tariffs filed with the Interstate Commerce Commission. Of course, that would require a statement of a rate between any points in the United States, and not confined to those points where the carrier had entered into a through rate or through route, and I desire to ascertain whether, in your judgment, it is practicable to so provide.

Mr. LINCOLN. What section was that in, Mr. Chairman?

The CHAIRMAN. In my bill it is on page 24. What I want to get at is this, if I can, and as far as you can give us information on the subject: Is the complaint general because of inability to get a correct tariff on the line of the carrier itself?

Mr. LINCOLN. That is the complaint generally.

The CHAIRMAN. Is that complaint general?

Mr. LINCOLN. Yes; that is, on joint lines.

The CHAIRMAN. I am not talking about joint lines. Is there any difficulty in getting a correct, straight rate quoted where the transportation is confined to the line of the particular carrier quoting the rate?

Mr. LINCOLN. As to its own line?

The CHAIRMAN. Between points on its own rails.

Mr. LINCOLN. No, sir.

The CHAIRMAN. There is no question about that?

Mr. LINCOLN. It is usually as to the joint rates.

The CHAIRMAN. You say "joint rates." Let us be careful about our language, because a joint rate is one thing and a through rate is another thing. The difficulty usually comes, as I understand it—and I would like to have your opinion on that subject—on the quotation of rates where the freight is carried beyond the line of the carrier quoting the original rates.

Mr. LINCOLN. The difficulty usually occurs where the shipment is going beyond the rails of the line on which the business originates, but is moving under through tariffs to which it is a party.

The CHAIRMAN. Moving under through tariffs? What do you mean? Through tariffs filed with the commission, where there is a tariff sheet which quotes the rate, or through tariffs that may be composed of a sum of the local rates?

Mr. LINCOLN. As an illustration I gave a shipment from California to Minneapolis that did not move all the way to Minneapolis over the Union Pacific, because it does not go through, but there is a through rate published in that tariff and this through tariff, to which all lines are parties, is the tariff I have reference to here. I will give an illustration of a rate on bags, burlaps, gunny, or jute, less

than a carload, from Clare, Mich., on the Pere Marquette Railroad, to Amarillo, Tex., of \$1.34 per hundred; that was the through rate named in this tariff, and they are parties to the tariff.

The CHAIRMAN. The through rate on file with the commission?

Mr. LINCOLN. Yes, sir; it is in this tariff.

The CHAIRMAN. I wish you would call our attention specifically to that now and show where it is.

Mr. LINCOLN. I will give an illustration so it will appear in the record. The rate on bags, burlaps, gunny, or jute, less than carloads, from Clare, Mich., on the Pere Marquette Railroad, to Amarillo, Tex., is \$1.34 per hundred pounds.

The CHAIRMAN. How is that made up?

Mr. LINCOLN. That rate is provided for in Southwestern Lines tariffs, No. 1-B, naming rates from St. Louis, Omaha, Chicago, Cincinnati, Milwaukee, Detroit, Pittsburg, and points in the authenticated tariffs. In order to locate the territorial rate to be applied from Clare, Mich., we are referred to their territorial directory, which is a part of this tariff; in addition we are compelled to refer to a publication No. 1-Z, giving the exceptions to the western classification, and in addition we are referred to western classification No. 47. I haven't a copy of the territorial directory to file with you, but it is one of the tariffs that is necessary, and is referred to on the title-page of the tariff.

The CHAIRMAN. I do not understand.

Mr. LINCOLN. It is a through rate in which all lines are parties.

The CHAIRMAN. That is a through rate—is that through rate filed with the commission?

Mr. LINCOLN. Yes, sir.

The CHAIRMAN. In which all of these railroads join?

Mr. LINCOLN. I think, probably, I had better file this tariff, Mr. Chairman.

The CHAIRMAN. Tell us what it is. There is no use of filing it, as it will no doubt be thrown into the wastebasket.

Mr. LINCOLN. It is a tariff naming through rates from all these points, a list of issuing lines; this tariff covers two pages, and the list of participating lines covers four pages; and, for example, the Pere Marquette Railroad is shown as a participating line in F-1.

Mr. KENNEDY. Do all the railroads in that territory participate, or are there some that do not?

Mr. LINCOLN. I have not examined it in detail, but I presume there are many lines that possibly do not participate in this tariff, but probably none within the territory to which the tariff applies, as this tariff does not apply to roads, for example, from Pacific coast points.

Mr. HUBBARD. As things are you apply to the agent at the town at which you make your shipment for a rate, such as you have just mentioned, on the ground that it is to a point covered by the tariff, of which his road is a party?

Mr. LINCOLN. Yes, sir.

Mr. HUBBARD. Where you want to make a shipment to a point not covered by such tariff do you expect the agent at the point of shipment to give you a through rate?

Mr. LINCOLN. He can not give it without making inquiry of a connecting line for their rate.

Mr. HUBBARD. Do you ask him for it in a case of that kind?

Mr. LINCOLN. No, sir.

Mr. HUBBARD. You refrain from asking on the theory that it is as much your business to find out as his?

Mr. LINCOLN. I think it is ordinarily our business; yes, sir.

Mr. KENNEDY. The shipper generally pays the freight when he delivers the goods, does he not?

Mr. LINCOLN. The consignee, usually.

Mr. KENNEDY. Isn't the freight paid at the point where the shipment is from?

Mr. LINCOLN. Ordinarily the freight is paid at the point of delivery; in some cases the shipper does pay the freight.

Mr. KENNEDY. Isn't it in some way, then, the business of the agent to know what it would be?

Mr. LINCOLN. The agent at destination to know what the rate should be?

Mr. KENNEDY. The agent with whom you do business? When you consign your goods you ask him what the rate will be, don't you; and if he makes a shipment over other lines with which he is not connected he has some way of knowing what you have to pay, does he not?

Mr. LINCOLN. Why, that is the difficulty; where there is no through rate published you have to rely upon a combination of locals.

Mr. KENNEDY. Under any circumstances the consignee usually pays, when he ships the goods, in advance, doesn't he?

The CHAIRMAN. No, no.

Mr. LINCOLN. The consignor usually ascertains the rate in advance of the shipment.

Mr. KENNEDY. Don't the shipper usually pay in advance?

Mr. LINCOLN. Not ordinarily; some shippers do prepay their freight charges.

Mr. RICHARDSON. You just stated that a mistake frequently occurred; that when a consignor did pay the freight in advance on his furniture, or whatever it may be, notwithstanding the fact that a receipt may be shown to the man at the point of destination by the consignee, the furniture, or whatever it may be, is not always delivered, because there may be additional charges, and if the man at the destination point innocently delivers the property, according to the receipt as shown, the additional amount is not collected from the consignor, but from the man making the delivery?

Mr. LINCOLN. Well, that has been the rule in some instances.

Mr. RICHARDSON. The fact is if an agent delivers goods to the consignee in return for a receipt handed to him by the consignee and should afterwards ascertain that additional charges would be made, although he may be innocent in the matter, the amount is not collected from the man at the initial point, but the man delivering the goods must pay it?

Mr. LINCOLN. He has been, in some cases, made to pay.

Mr. RICHARDSON. Isn't that the rule of the railroad?

Mr. LINCOLN. I have said that the railroad companies ask the employees to be responsible for the error.

Mr. RICHARDSON. They do not hold the other fellow at the other end; they hold the innocent man that delivers the goods to the consignee?

Mr. LINCOLN. Yes, sir; in some cases they do.

The CHAIRMAN. If I may resume, I will try to get some further information. In reference to the through rates, can you give any statement of what proportion of points in the United States have through routes or rates on file as compared with those that do not have through rates or through routes established?

Mr. LINCOLN. I believe that the great bulk of our traffic is handled under through rates.

The CHAIRMAN. I was told recently by some of the members of your association in Chicago that they thought that probably one-third of the traffic was handled on through rates and through routes.

Mr. LINCOLN. Well, I disagree with that. However, Mr. Chairman, I have found from my experience as a railroad man, and my experience now, that wherever there is a large volume of traffic moving and any considerable business moving between points with different tariffs there is generally a joint through rate arranged; there is usually that thing.

The CHAIRMAN. Isn't it a very common thing to charge at some of the local rates on through business without establishing a through rate?

Mr. LINCOLN. There are cases of that kind.

The CHAIRMAN. Aren't they very common?

Mr. LINCOLN. Yes, there are lots of them.

The CHAIRMAN. The small shipper is much more apt to use a line where it requires the sum of the locals than the large shipper?

Mr. LINCOLN. No, I think not. Mr. Chairman, I see your point, and I would like to correct that answer, because I run across it very often—that a large shipper, with the benefit of his traffic man, is able to make a shipment on a combination of locals by shipping to a junction point and there arranging to reship, and therefore gets a better rate than the small shipper who has no knowledge of that kind.

The CHAIRMAN. Is there any reason, in your opinion, why an agent of a road should not ascertain from the connecting carriers and furnish to the shippers the rate that is to be charged?

Mr. LINCOLN. On a stated through movement I think he can get it, and I would be very, very glad to have it; but it has been held that that would be asking an agent for information that he could not have, because he would have to obtain that information through another source.

The CHAIRMAN. My object is to get your opinion and such information as you may have.

Mr. LINCOLN. Yes, sir. I presume the shipper would ask for quotations from both lines, and he would put the two together; he would get quotations from both lines. Mr. Chairman, I wish to say that we want to be as conservative as possible; we want our rights, and we are asking that the agent quote those rates which should be on file in his station, of which he is supposed to have knowledge—the legal rates.

The CHAIRMAN. I know, but if you ask for rates which the agent himself can ascertain from the sheet on file, that is asking for a rate that you yourself can ascertain by looking at the rate. I take it that the average country railroad agent is not nearly as well informed as to rates as you are.

Mr. LINCOLN. I hope not; I should think not.

The CHAIRMAN. Is not nearly as well informed as the traffic agents of the large shippers?

Mr. LINCOLN. No; but then there is this to be borne in mind, Mr. Chairman, the average local agent is dealing with rates that ought to be on file; he does not have to be acquainted with rates to points not on his line.

Mr. ADAMSON. Between stations on his own particular line, that is all?

Mr. LINCOLN. Yes, sir.

The CHAIRMAN. If he had only to give information as to rates between his station and other points on his own line, that is a simple proposition, but when he has to give rates between Podunk and Boston or some point up in northeastern Maine, that is quite a different proposition.

Mr. LINCOLN. Yes, sir.

The CHAIRMAN. You know better than I do, and I know enough to know, that there are 200,000 changes of rates filed with the Interstate Commerce Commission in the course of a year, and you receive, as I receive, publications attempting to give the weekly filings of new amendments to rates; it is very difficult for me to understand them, and I do not see how the agent can understand them. Wouldn't the inevitable result be, in either case, that whatever tariff is adopted, as to rates to be furnished, the freight agent in the country, on a shipment for a point not on his road, will be required to ascertain the rate from some one in authority in a bureau of the railroad office for that purpose before giving rates?

Mr. LINCOLN. I think the requirement is that way now; under the law he is required to know, so as to know what rate is used.

The CHAIRMAN. In any event, so far as the country agent is concerned, when it comes to a rate where there is any complication, wouldn't he appeal to somebody in authority at the central office for the rate?

Mr. LINCOLN. Certainly; absolutely no question on that point.

The CHAIRMAN. If he does that, is there any reason why he should not get the rate between points in the United States and furnish it to the shipper?

Mr. LINCOLN. I would like to see it done. We would like to get direct quotations from both, from the point of origin to the point of destination.

The CHAIRMAN. I understand your theory is that a railroad company, offering transportation for sale, should be like other people offering articles for sale; they should furnish the prices?

Mr. LINCOLN. The prices; yes, sir.

The CHAIRMAN. And that we make a penalty upon them, if you get a written price, that they should furnish the correct price at their peril?

Mr. LINCOLN. Yes, sir.

The CHAIRMAN. You referred here to a written statement, or both bills provide for a written statement. I suppose that would not necessarily mean a statement in writing, and if it does not mean a statement in writing, would it mean a printed statement, and if it means a printed statement, would offering the tariff sheet be an answer to the request?

Mr. LINCOLN. I would consider that just an effort to evade the law. If I ask them to furnish this tariff to me, and they furnish me this and say this is the rate, I do not think that would comply with the law.

The CHAIRMAN. That would never do.

Mr. LINCOLN. That would never do in the world; no, sir.

The CHAIRMAN. In this bill you provide also that, in addition to refusing to furnish the rate, or in furnishing an incorrect rate, on the part of the carrier, there must be damage suffered.

Mr. SIMS. Which bill are we considering?

The CHAIRMAN. He has been talking about section 8 of the Townsend bill. Suppose, in order to hold the railroad responsible, you had to prove damage as a consequence of a misstatement of the rate. Do you not think that would make it very difficult?

Mr. LINCOLN. Damages on account of a misstatement of the rate?

The CHAIRMAN. Yes.

Mr. LINCOLN. That it would be very difficult to prove them?

The CHAIRMAN. Yes.

Mr. LINCOLN. I would say, from my own experience, it would not be very difficult.

The CHAIRMAN. Where damages occurred it might not be difficult, but it would be difficult if they refused to give you the rate, would it not?

Mr. LINCOLN. I think it would not be difficult to prove damages. If they refused to give you the rate, they ought to be penalized for failing to do it.

The CHAIRMAN. But there is no penalty for failure to give the rate unless you prove damages. Do you not think the railroad company ought to be required to furnish the correct rate upon request, regardless of whether you showed damages by the refusal of the company to furnish the rate or not?

Mr. LINCOLN. I think it ought to be furnished, and suppose they are going to furnish the correct rate on request. But by reason of erroneous quotation, where no party has been injured, I do not think they ought to be fined. We are simply asking some means by which we can get quotations in writing as an affirmative statement, on the part of the carrier, of the legal rate. If they furnish it and there is damage, they ought to be fined for it.

The CHAIRMAN. Under the provisions of this bill—of both bills, for that matter—it would appear that they might simply furnish you the tariffs in answer to the request, and if they refused to answer anything you have no recourse.

Mr. LINCOLN. I do not so construe the bill. I may say that if I am damaged by reason of their failure to furnish me information there is a penalty. If the bill does not provide for that—if they can sit back and not furnish the quotation and there is no penalty, there should be some.

The CHAIRMAN. There is a penalty. (Reading:)

If any railroad corporation, being a common carrier subject to this act, * * * shall refuse or omit to give such written statement within a reasonable time, * * * and if the person or company making such request suffers damage in consequence of such refusal or omission * * * then the said carrier shall be liable to a penalty.

Supposing the carrier refuses to furnish the rate, the fact that you did not make a sale would not, in law, be held a damage to you. If you do not get the rate and do not make the shipment there is no damage.

Mr. LINCOLN. I do not quite catch your point.

The CHAIRMAN. This makes an absolute penalty of \$250. Suppose a railroad should furnish a rate on which a number of shipments were made in good faith, and in course of time the court, or some one else, should decide that the railroad rate that was furnished was not in accordance with the law or the tariff schedule on file. There might have been a large number of shipments made under that. Do you think it would be quite fair to put a penalty of \$250 against the railroad for each one of those shipments?

Mr. LINCOLN. Making each car a separate offense? I hardly think, if there was an erroneous quotation made on 100 cars, each car should be a separate offense against the road, on the question of misdemeanor.

Mr. TOWNSEND. Mr. Lincoln, as I understand it, your desire for this provision is to insure what the law contemplates, namely, a correct quotation of the rate to the shipper?

Mr. LINCOLN. That is what we are asking.

Mr. TOWNSEND. Is it or is it not a fact that the ordinary shipper is unable by looking at the tariff schedules to obtain the proper rate over connecting lines parties to a joint tariff?

Mr. LINCOLN. Over connecting lines?

Mr. TOWNSEND. Over several lines.

Mr. LINCOLN. As stated in these tariffs, I think it is impossible for a man to get the correct rate.

Mr. TOWNSEND. The provision here is to the effect that the carrier responsible for the rates to which it is a party shall quote the correct rates. If you wanted to get a rate to a destination, a part of the way to which another line, not a party to that joint rate, carries, you could get a quotation under this law from the party responsible for the rate over that connecting line, could you not?

Mr. LINCOLN. I would so construe it.

Mr. TOWNSEND. By making application to it.

Mr. LINCOLN. If you treat them as separate rates.

Mr. HUBBARD. I understand your question applied to points which are not on a tariff to which this road is a party?

Mr. TOWNSEND. Yes.

Mr. HUBBARD. How would they get that under this law?

Mr. TOWNSEND. This is the proposition. The shipper could get, under this law, a quotation over its lines and connecting lines to which these railroads are parties in the joint tariff.

Mr. HUBBARD. Yes.

Mr. TOWNSEND. When you go to the end of that line, and you are sure you connect with another line carrying to the destination, you can get a quotation from that other line for its portion.

Mr. HUBBARD. I thought you meant from the initial run.

Mr. TOWNSEND. No; would it not be an injustice upon the initial carrier to demand that he shall give you correct rates over which he has absolutely no control and to which he is not a party?

Mr. LINCOLN. That has been our theory, that we should not try to hold the initial line responsible for quotations on a connecting carrier where he is not a party to the rate, or over which rates he has no control. We want the legal rate, and we want the legal rate applicable to a legal or joint tariff to which the railroad is a party.

Mr. TOWNSEND. Do you think that a provision for a written quotation of rates, or a specific rate, could possibly be construed as handing over the public tariff schedules of the roads?

Mr. LINCOLN. I would not. When you ask for a written quotation I would feel that you had to have it in writing. The printed quotation would not be the quotation under the law.

Mr. HUBBARD. And that would apply to that particular shipment?

Mr. LINCOLN. It has to be as to a particular shipment. You have to give reference to the shipment.

The CHAIRMAN. There is no particular shipment; there is no shipment contemplated.

Mr. HUBBARD. I beg your pardon. You have to describe the shipment, under the bill.

Mr. LINCOLN. You have to describe the shipment in all the points. You want to make a shipment and then ask for the quotation. I think that is a very proper provision, because I go to a railroad and say, "I want your rates from Chicago to 100 small stations." We would send salesmen out to see whether we would decide to enter that territory, and when I get a road to make a shipment I will ask what the rate is.

The CHAIRMAN. Of course it means a proposed or possible shipment?

Mr. LINCOLN. Proposed shipment; yes, sir. It says here "applicable to a described shipment." It is a proposed shipment. I do not think any law has been put on the statute books as to which technical features could not be raised.

The CHAIRMAN. We would like to raise them in advance rather than after the law is passed, if there are any.

Mr. LINCOLN. I would like to be of any aid to the committee I can. If I can give any information, I want to give it freely.

The CHAIRMAN. Do you think that under this provision for a written statement the railroad company would not be authorized to print an answer to an inquiry that might come in a hundred times a day?

Mr. LINCOLN. They do not get them that way, Mr. Chairman. But I do not think they can answer a request by sending a printed tariff, because that is not a direct statement of the rate. You can find it in there, but if they want to print it in a sheet, or on any form that would answer the same purpose, the specific paper as to the rate, put it in type or writing. I think it would be treated the same as writing. But to merely furnish a tariff is not a response to the request.

I want to make one suggestion in regard to a change in that section as it is drawn. On page 14, line 5, it says: "If any railroad corporation, being a common carrier," etc. It seems to me that ought to read "If any common carrier subject to this act," striking out "railroad corporation, being a common carrier subject to this act." Of course line 1 on page 15 would have to be amended to harmonize. As it is now this is only directed to a railroad corporation, and

there are other common carriers outside of railroads; express companies, with whom we are dealing all the time and who are subject to the act, and we say they should be held to the same requirements.

Mr. BARTLETT. Permit me to say, from my experience, that express companies are much more exorbitant, and the rates differ much more than as to railroads.

Mr. LINCOLN. They do not need to publish any tariffs.

Mr. ESCO. Is there the same necessity for requiring a statement of the charge as with railroad companies, owing to the fact that there are only five or six of the express companies, and they extend over a great region?

Mr. LINCOLN. I am sorry you have asked me that question, because I do not deal with the express companies, but I anticipate Mr. Barlow will be here, who has been making a very thorough study of it. In fact, they have some suits now pending in Illinois in regard to express companies. We are unable to get information from express companies at all. They are not printing tariffs now; they are made out in ink. The agent at St. Louis has the rate from St. Louis, but he could not tell me what a rate is from Chicago at all. If I were in St. Louis and wanted to know what the rate was from Springfield, I could not find out. You have no way of testing their quotations. That is the reason I suggested that that change be made, striking out "If any railroad corporation, being a common carrier subject to this act," and making it read "If any common carrier subject to this act," harmonizing line 1 on page 15.

The CHAIRMAN. Mr. Lincoln, if we should enact this whole provision, what occasion would there then be for filing tariff sheets as required by the act to regulate commerce, or, rather, by the regulation of the Interstate Commerce Commission, which has abolished the real requirement?

Mr. LINCOLN. Requirement to post tariffs?

The CHAIRMAN. In the different railroad offices—what benefit would there be in requiring the railroad company to file its tariff sheets in every local office if the agent is required at the risk of the railroad company to furnish on request a statement of the tariff?

Mr. LINCOLN. I would say that my own experience is they would have very few inquiries for written quotations. Most of the quotations will be asked for in writing by the men who need the protection, and you would only make a request for a written quotation if a large shipper was off on a particular shipment upon which he wants an absolute certainty as to his information as to the legal rate.

The CHAIRMAN. What makes you think that, now?

Mr. LINCOLN. My own experience.

The CHAIRMAN. You have never had the experience yet where you could require the railroad company at its risk to furnish you with a tariff rate. Do you think that if you could require the company to furnish the rate that people ordinarily would not ask for it?

Mr. LINCOLN. When they have knowledge of what the rate is they are not going to repeatedly make requests for the rates.

The CHAIRMAN. If they are making the same shipments day after day, perhaps not, but whenever there is a variation, will they not make the request? It is no expense or trouble to them.

Mr. LINCOLN. I should think they would. They are conducting their business on transportation, and transportation is an important

part of their business, and they want to know what the legal rate is—what they have to pay.

The CHAIRMAN. It would seem to me that they would be likely to make use of it very often.

Mr. LINCOLN. What I meant, Mr. Chairman, was this—do not misunderstand me. I do not believe that the passage of this act is going to mean that the large shippers, the big shippers, who only could disturb the office, are going to start in and ask for copies for their protection, because they have a tariff dated January 1. They know that is a legal rate for 30 days. No man would make the request when he has that. He knows what it is for 30 days. He might in 60 days ask for information as to the tariff, to see if there was any change. Having got that information, he knows he is protected again.

The CHAIRMAN. You say a man has a tariff filed January 1. Most all of these filings are amendments to existing tariff sheets.

Mr. LINCOLN. Yes; but when a man has a tariff that is dated January 1, he knows legally that tariff can not be changed until February 1, for example, thirty days.

The CHAIRMAN. Very well, but he does not very often get in the situation where he has a tariff sheet covering tariffs dated January 1. On the contrary, he will have a great many amendments to any tariff sheet he has, if he has very much traffic.

Mr. LINCOLN. Mr. Chairman, I possibly did not make myself entirely clear on that point. If I have a large traffic and am getting amendments to the tariffs, when I get the last amendment I know the rates provided for in the tariff are good for thirty days, because the last amendment carries it thirty days forward. So I always know the life of a tariff is for thirty days.

The CHAIRMAN. That is what I started to ask you. The act to regulate commerce requires the filing of these tariff sheets in every railroad office, publicly. That has been modified by the commission, under authority of the act, so that they are no longer filed publicly, but they post up a notice stating you can get access to them by application to the agent.

Mr. LINCOLN. Yes, sir.

The CHAIRMAN. If you require the railroad company to furnish the tariff rate at its risk, is there any occasion for requiring the public filing of these tariff sheets?

Mr. LINCOLN. I should say that as it is required that they shall furnish the information to any shipper who may ask for the information as to the legal rate, it would not be absolutely necessary to file it.

Mr. KENNEDY. Would it be necessary to check up to see whether the information they give you is correct?

Mr. LINCOLN. I think most large shippers would take that precaution.

Mr. KENNEDY. You could get that information free here in Washington?

Mr. LINCOLN. Or in the required places. The commission have required certain places where the tariffs have to be kept on file.

(Thereupon, at 11.55 o'clock a. m., the committee took a recess until to-night at 8 o'clock p. m.)

NATIONAL INDUSTRIAL TRAFFIC LEAGUE.

Officers.—J. C. Lincoln, president, St. Louis; W. M. Hopkins, vice-president, Chicago; W. E. Cooke, secretary-treasurer, Chicago. Honorary vice-presidents: J. M. Belleville, J. S. Marvin, H. W. B. Glover, J. S. Davant, J. H. Johnston, E. G. Wylie, C. R. Rust, F. B. Gregson, D. O. Ives.

Directors.—S. H. Babcock, H. C. Barlow, I. S. Bassett, C. J. Bell, O. F. Bell, L. C. Bihler, L. B. Boswell, L. A. Clark, W. E. Cooke, A. J. Gifford, J. L. Graham, C. B. Gregory, J. M. Guild, R. B. Hanley, R. L. Hearon, G. W. Jackson, J. Keavy, J. C. Lincoln, F. E. Marshall, F. W. Maxwell, R. O. McCormack, H. R. Moore, E. A. Risdon, J. F. Ryan, G. A. Schroeder, J. J. Telford, W. P. Trickett, J. B. Van Vechten, H. G. Wilson, E. E. Williamson.

Executive committee.—H. C. Barlow, chairman; F. B. Montgomery, O. F. Bell, J. M. Belleville, F. T. Bentley, L. B. Boswell, W. D. Hurlbut, C. A. Jennings, H. G. Wilson, E. J. McVann, J. Keavy, W. P. Trickett.

Standing committees.—Organization: P. M. Hanson, chairman, Ira S. Bassett, O. F. Bell, H. A. Earnshaw, C. C. Furgason, R. L. Hearon, and R. O. McCormack. Membership: F. T. Bentley, chairman, J. M. Belleville, J. Keavy, and L. Richards. Finance and auditing: O. F. Bell, chairman, H. C. Barlow, and E. G. Wylie. Legislative: J. C. Lincoln, chairman, H. C. Barlow, Ira S. Bassett, L. B. Boswell, E. J. McVann, H. H. Smith, and E. E. Williamson. Car service: H. R. Moore, chairman, J. M. Glenn, C. B. Gregory, Jno. Hart, C. A. Jennings, W. A. Sproull, and H. G. Wilson. Transportation instrumentalities: J. S. Marvin, chairman, L. C. Bihler, W. J. Evans, H. L. Goemann, P. M. Hanson, F. B. Montgomery, and W. B. Moore. Rate construction: L. B. Boswell, chairman, W. H. Allen, J. M. Guild, J. H. Johnston, H. S. Kealhofer, J. Keavy, and L. Richards. Tariffs: E. G. Wylie, chairman, L. A. Clark, W. H. Frederick, W. M. Hopkins, C. O. Johnson, R. O. McCormack, and L. F. Moore. Freight claims: J. M. Belleville, chairman, John Hart, W. D. Hurlbut, J. Chas. Maddison, R. W. Smith, F. H. Truax, and Geo. A. Wells. Classification: Official territory—D. O. Ives, chairman, J. M. Belleville, L. A. Clark, J. F. Ryan, and Wm. A. Sproull; western territory—W. J. Evans, J. M. Guild, P. M. Hanson, and F. W. Maxwell; southern territory—H. S. Kealhofer, J. J. Telford, and E. E. Williamson. Bill of lading: E. E. Williamson, chairman, O. F. Bell, Ira S. Bassett, H. C. Barlow, W. M. Hopkins, F. E. Marshall, and E. J. McVann.

PREAMBLE.

Believing the requirements of commerce are best served by a thorough understanding upon the part of railways and the shipping public of each other's needs, this organization stands for and will undertake through conference, publicity, and other proper means to promote such knowledge of transportation affairs as will aid in effecting such result; to assist in the enactment of clearly defined laws governing interstate traffic and the interchange of views regarding intra-state legislation which does or may affect interstate commerce, that the public may be relieved of all uncertainty as to its relations to the carriers; also, to acquaint the regularly established tribunals of the needs of the shipping interests and the effect on commerce of rulings, decisions, and practices either fixed or to be determined by such bodies.

CONSTITUTION.

ARTICLE I.—Name.

The name of this organization shall be The National Industrial Traffic League.

ARTICLE II.—Object.

The object of this league is to interchange ideas concerning traffic matters; to cooperate with the Interstate Commerce Commission, state railroad commissions, and transportation companies in promoting and securing a better understanding by the public and the State and National Governments of the needs of the traffic world; to secure proper legislation where deemed necessary, and the modification of present laws, regulations, and rulings where considered

harmful to the free interchange of commerce; with the view to advance fair dealing, and to promote, conserve, and protect the commercial and transportation interests.

ARTICLE III.—*Membership.*

Those eligible as members are traffic directors, managers, or commissioners of industrial or commercial organizations and traffic officers of representative shipping concerns in the United States.

Application for membership will be presented to the secretary-treasurer, who will report same to the membership committee, which latter will pass on acceptance and report to the executive committee.

There shall be a membership fee of \$10, payable on notification of admission to membership.

ARTICLE IV. —*Officers.*

The officers shall be a president, vice-president, secretary-treasurer, and a board of directors of not less than 20 members, selected so as to give, as much as possible, representation to each locality and organization. Said officers and directors shall be elected at each annual meeting of the league.

ARTICLE V.—*Duties of officers.*

President.—It shall be the duty of the president to preside at all regular or special meetings of the league; appoint all standing or special committees unless otherwise provided by resolution; approve all drafts on the treasurer for regularly authorized expenditures.

Vice-president.—The vice-president shall preside at meetings of the league in the absence of the president, or when called upon by the latter, and perform the other duties of the president in event of inability of the latter from any cause.

Secretary-treasurer.—The secretary-treasurer shall keep the minutes of all regular or special meetings of the league; conduct all correspondence; issue calls for meetings, and notices of proposed changes in the constitution or articles of organization as provided therein; issue and distribute to the members proceedings of all meetings, and notify members of their appointment on standing or special committees.

He shall collect all dues or membership fees, which he shall deposit in some national bank which he may select, subject to his check for the payment of expenses incurred, when regularly authorized.

Directors.—The board of directors shall be the governing body of this league and shall have the power to increase their number, and may select from its own body a smaller number, not to exceed seven, which shall constitute the executive committee. The president, vice-president, and secretary-treasurer shall be ex-officio members of the board of directors and executive committee.

Vacancies may be filled by the board of directors. Officers so chosen to serve until the next annual meeting.

Executive committee.—The executive committee shall conduct all the detail business of the league in conjunction with the officers, under authority conferred on it by the board of directors; make recommendations to the board from time to time on the requirements of the league, standing, or special committees to be appointed.

It shall receive all matters presented for consideration by the league, and make assignment of each to the proper committee, or to the president for special assignment in case the subject is not covered by standing committees.

ARTICLE VI.—*Dues.*

There shall be no annual dues, but for the purpose of meeting incidental expenses for clerical labor, stationery, postage, office, and traveling expenses, the board of directors may authorize from time to time assessments necessary to cover said expenses. Such assessments shall be apportioned between the members as shall be determined by the executive committee, but in no case shall the amount assessed against any member at any one time be less than \$10 nor more than \$50.

Note.—(Resolution adopted at annual meeting, November 11, 1909.) The assessment provided for in article 6 shall not exceed \$50 as a maximum in any one year, and there shall be no more than one assessment per year.

ARTICLE VII.—*Meetings.*

Annual meetings of this league shall be held on the second Thursday in October, beginning with 1908, at such place as may be decided by board of directors. No other stated meetings of this league shall be held, but special meetings may be called on request of five members of the board of directors, notice of said meeting to be given at least fifteen days in advance of the date set.

Annual meetings of the board of directors shall be held immediately following annual meetings of this league, and special meetings of the board may be called on written request of five members thereof.

Quorum.—The presence of twenty members shall be necessary to constitute a quorum at all meetings of the league.

A majority of the board of directors shall constitute a quorum, except to adjourn.

ARTICLE VIII.—*Changes.*

These articles may be changed by a two-thirds vote of the board, except as to name, object, membership, and dues, for any change in which a majority vote of membership is required. Notice of all proposed changes shall be bulletined to all members at least thirty days before action is taken.

BY-LAWS.

ORDER OF BUSINESS.

Roll call.

Reading minutes of previous meeting.

Report of standing committees.

Report of special committees.

Unfinished business.

New business.

Selection of time and place for next meeting.

COMMITTEES.

There shall be standing committees appointed by the president, to whom shall be referred for recommendation to the executive committee all matters presented for the consideration of this league. These standing committees shall be as follows, and may be added to or changed as necessity develops: Organization, membership, finance and auditing, legislative, car service, transportation instrumentalities, rate construction; tariffs-publication, filing, posting—classification, freight claims.

In meetings of the league questions on resolutions will be governed by majority vote of members present, except as to change in name, object, membership, and dues, provided that nothing herein shall usurp the right of individual action.

MEMBERSHIP.

American Cotton Oil Company, C. A. Jennings, manager transportation department, Chicago, Ill.; American Hide and Leather Company, H. L. Pratt, traffic manager, 92 Cliff street, New York City; Associated Jobbers of Los Angeles, F. P. Gregson, traffic manager, Los Angeles, Cal.; American Lumber and Manufacturing Company, M. Riely, traffic manager, Publication Building, Pittsburg, Pa.; American Radiator Company, H. W. Richards, traffic manager, Chicago, Ill.; American Sewer Pipe Company, Ross W. Smith, Pittsburg, Pa.; American Sheet Tin Plate Company, A. G. Young, traffic manager, Pittsburg, Pa.; Anheuser-Busch Brewing Association, R. Muehlberg, traffic manager, St. Louis, Mo.; Arbuckle Brothers, W. H. Allen, traffic manager, New York City; Armstrong Cork Company, F. L. Suter, traffic manager, Pittsburg, Pa.; Automatic Electric Company, W. E. Cooke, traffic manager, Chicago, Ill.; Baltimore Chamber of Commerce, J. B. Hessong, assistant secretary, Baltimore, Md.; Ball Brothers Glass Manufacturing Company, L. A. Clark, traffic manager, Muncie, Ind.; Barrett Manufacturing Company, E. H. Poetter, traffic manager, 1005 First National Bank Building, Chicago, Ill.; Battle Creek Breakfast Food Company (Limited), J. E. Linahan, general manager, Chicago, Ill.; A. L. Berry Coal Company, A. L. Berry, president, Chicago, Ill.; Billings Chamber of Commerce, W. A. Selvidge, president, Billings, Mont.; Bloomington Business Men's Association,

J. S. Joplin, traffic manager, Bloomington, Ill.; Bottle Manufacturers' Association, W. F. Obear, chairman freight commission, Second and Chestnut streets, St. Louis, Mo.; S. F. Bowser & Co. (Incorporated), J. O. Goff, traffic manager, Fort Wayne, Ind.; Canning & Co., R. M. Field, traffic manager, Peoria, Ill.; Carolina Chemical Company, II. W. B. Glover, traffic manager, Atlanta, Ga.; Cedar Rapids Commercial Club, John Wunderlick, secretary, Cedar Rapids, Iowa; C. E. Burrows Lumber Company, L. M. Roser, manager, Aberdeen, Wash.; Butler Brothers, Robert H. Forbes, traffic manager, 495 Broadway, New York; Cambria Steel Company, William A. Sproull, general freight agent, Philadelphia, Pa.; Carnegie Steel Company, L. C. Bihler, traffic manager, Pittsburg, Pa.; Chamber of Commerce, S. R. Mason, transportation secretary, Cleveland, Ohio; Chamber of Commerce, A. W. Reeves, traffic manager, El Paso, Tex.; Chamber of Commerce, N. B. Kelly, freight commissioner, Philadelphia, Pa.; Chicago Association of Commerce, H. C. Barlow, traffic director, Chicago, Ill.; Chicago Board of Trade, W. M. Hopkins, manager transportation department, Chicago, Ill.; Clarke Brothers & Co., R. M. Field, traffic manager, Peoria, Ill.; Clinton Manufacturers and Shippers' Association, M. Dight Smiley, secretary, Clinton, Iowa; Coffeyville Traffic Bureau, J. P. Casey, commissioner, Coffeyville, Kans.; Colorado Fuel and Iron Company, R. L. Hearon, traffic manager, Denver, Colo.; Colorado Manufacturers' Association and Transportation Bureau, A. J. Zint, traffic manager, Denver, Colo.; Commercial Club of Duluth, C. R. Rust, chairman, traffic commissioner, Duluth, Minn.; Commercial Club of Omaha, J. M. Guild, commissioner, Omaha, Nebr.; Commercial Club of St. Joseph, F. W. Maxwell, commissioner, St. Joseph, Mo.; Commercial Club Traffic Bureau, S. H. Babcock, commissioner of traffic, Salt Lake City, Utah; Commercial Club of Omaha, E. J. McVann, representative traffic bureau, Omaha, Nebr.; Crane Company, O. F. Bell, traffic manager, Chicago, Ill.; Dain Manufacturing Company of Iowa, Paul Arbenz, secretary, Ottumwa, Iowa; Dayton Chamber of Commerce, W. B. Moore, secretary, Dayton, Ohio; Deere & Co., A. R. Ebi, traffic manager, Moline, Ill.; Detroit Board of Commerce, James B. Van Vechten, manager transportation, Detroit, Mich.; Douglas & Co., B. H. O'Meara, traffic manager, Cedar Rapids, Iowa; Evansville Manufacturers' Association, J. C. Kellar, manager traffic department, Evansville, Ind.; Fisk Rubber Company, R. L. Lyman, traffic manager, Chicopee Falls, Mass.; J. B. Ford Company, J. S. Kellie, traffic manager, Wyandotte, Mich.; Fort Pitt Malleable Iron Company, Frank J. Lanahan, president, Pittsburg, Pa.; Fort Worth Board of Trade, Fort Worth, Tex.; Fort Worth Freight Bureau, R. D. McCormack, secretary and traffic manager, Fort Worth, Tex.; General Electric Company, Maj. A. J. Gifford, manager transportation department, Schenectady, N. Y.; General Fire Extinguisher Company, C. H. Bell, traffic manager, Warren, Ohio; Goemann Grain Company, Toledo, Ohio; Grasselli Chemical Company, John Hart, traffic manager, Cleveland, Ohio; Greater Des Moines Committee, E. G. Wylie, freight commissioner, Des Moines, Iowa; Harber Brothers Company, J. S. Joplin, traffic manager, Bloomington, Ill.; Hardwood Manufacturers' Association of the United States, R. L. McClelland, chairman transportation committee, 140 West Chicago avenue, Chicago, Ill.; H. J. Heinz Company, C. O. Johnson, traffic manager, Pittsburg, Pa.; Hinde & Dauch Paper Company, Joe McFadden, traffic manager, Sandusky, Ohio; Houston Cotton Exchange and Board of Trade, C. C. Oden, traffic manager, Houston, Tex.; Illinois Grain Dealers' Association, S. W. Strong, secretary, 704 East Water street, Pontiac, Ill.; Illinois Steel Company, F. T. Bentley, traffic manager, Chicago, Ill.; International Banana Food Company, L. D. Rosenheimer, traffic manager, Chicago, Ill.; Illinois Manufacturers' Association, J. M. Glenn, secretary, Chicago, Ill.; Indianapolis Freight Bureau, J. Keavy, commissioner, Indianapolis, Ind.; Inland Steel Company, C. L. Lingo, traffic manager, Indiana Harbor, Ind.; International Harvester Company, F. B. Montgomery, traffic manager, Chicago, Ill.; Inter-State Hay Company, H. E. Johnson, traffic manager, Goshen, Ind.; Iowa State Manufacturers' Association, G. A. Wrightman, secretary, Des Moines, Iowa; Jobbers' Transportation Bureau, St. Joseph, Mo.; H. W. Johns-Manville Company, W. C. Morgenroth, traffic manager, Milwaukee, Wis.; Jones & Laughlin Steel Company, F. A. Ogden, general freight agent, Pittsburg, Pa.; Kansas Grain Dealers' Association, E. J. Smiley, secretary, Topeka, Kans.; Kelly-Haw-Thomson Company, Frank O. Davison, traffic manager, Duluth, Minn.; Labelle Iron Works, A. P. Oxtoby, traffic manager, Steubenville, Ohio; Lackawanna Steel Company, W. E. Howes, traffic manager, New York City; Larkin Company, James Collard, traffic manager, Buffalo, N. Y.; W. J. Lemp Brewing Company, L. Feickert, traffic

manager, St. Louis, Mo.; Lincoln Commercial Club, W. S. Whitten, commercial secretary, Lincoln, Nebr.; Louisville Board of Trade, J. J. Telford, secretary transportation committee, Louisville, Ky.; Louisville Cotton Oil Company, C. P. Fink, secretary, Louisville, Ky.; Macbeth-Evans Glass Company, C. R. Peregrine, traffic manager, Pittsburg, Pa.; Mallinckrodt Chemical Works, H. A. Borgmann, traffic manager, St. Louis, Mo.; Manufacturers' Club of Buffalo, William H. Frederick, general traffic manager, Coal and Iron Exchange, Buffalo, N. Y.; Marshall-Wells Hardware Company, C. F. Rowe, traffic manager, Duluth, Minn.; Memphis Freight Bureau, James S. Davant, commissioner, Memphis, Tenn.; Memphis Grain and Hay Association, C. B. Stafford, commissioner, Memphis, Tenn.; Merchants' Exchange of St. Louis, J. C. Lincoln, commissioner traffic bureau, St. Louis, Mo.; Merchants' Freight Bureau, A. R. Bragg, traffic manager, Little Rock, Ark.; Michigan Manufacturers' Association, H. H. Smith, attorney, Detroit, Mich.; Milwaukee Chamber of Commerce, George A. Schroeder, manager freight bureau, Milwaukee, Wis.; Minneapolis Chamber of Commerce, W. P. Trickett, traffic manager, Minneapolis, Minn.; Minneapolis Traffic Association, W. P. Trickett, executive manager, Minneapolis, Minn.; Missouri Manufacturers' Association, P. M. Hanson, chairman transportation committee, St. Louis, Mo.; Montgomery Freight Bureau, H. S. Kealhofer, manager, Montgomery, Ala.; Montgomery Ward & Co., J. Charles Maddison, traffic manager, Chicago, Ill.; Mound City Paint and Color Company, W. S. Mellen, traffic manager, St. Louis, Mo.; National Association of Stove Manufacturers, E. C. Hanrahan, secretary, Chicago, Ill.; National Association Agricultural Implement and Vehicle Manufacturers, W. J. Evans, secretary, 205 La Salle street, Chicago, Ill.; National Association of Automobile Manufacturers (Incorporated), James S. Marvin, traffic manager, 7 East Forty-second street, New York City; National Association of Piano Dealers, C. R. Putnam, secretary, Boston, Mass.; National League of Commission Merchants, R. E. Hanley, business manager, Buffalo, N. Y.; National Brake and Electric Company, M. F. Ries, traffic manager, Milwaukee, Wis.; National Candy Company, W. C. Lindsay, traffic manager, 311 Granite Building, St. Louis, Mo.; National Carbon Company, A. J. Mitchell, traffic manager, Cleveland, Ohio; National Cash Register Company, J. W. Cobey, assistant traffic manager, Dayton, Ohio; National Enameling and Stamping Company, P. M. Hanson, traffic manager, St. Louis, Mo.; National Lumber Manufacturers' Association, G. K. Smith, secretary, chairman transportation committee, Fullerton Building, St. Louis, Mo.; National Petroleum Association, Fred W. Boltz, traffic manager, 1017 Rose Building, Cleveland, Ohio; National Piano Manufacturers' Association, Thomas C. Moore, 171 La Salle street, Chicago, Ill.; National Supply Company, J. F. Ryan, traffic manager, Toledo, Ohio; New England Board of Transportation, D. O. Ives, chairman, Boston, Mass.; Ohio Shippers' Association, J. W. McCord, secretary, Columbus, Ohio; Oil Well Supply Company, R. H. Thompson, traffic manager, Pittsburg, Pa.; Oklahoma Traffic Association, J. H. Johnstone, commissioner, Oklahoma City, Okla.; Omaha Grain Exchange, T. P. Manchester, secretary, Omaha, Nebr.; Pabst Brewing Company, C. Zielke, traffic manager, Milwaukee, Wis.; Paepcke-Leicht Lumber Company, W. Williams, traffic manager, Chicago, Ill.; F. A. Patrick & Co., E. A. Risdon, traffic manager, Duluth, Minn.; Pitt & Scott (Limited), E. N. Whiting, New York City; Pittsburg Chamber of Commerce, Ira S. Passett, traffic manager, Pittsburg, Pa.; Pittsburg Plate Glass Company, J. M. Belleville, general freight agent, Pittsburg, Pa.; Pittsburg Steel Company, A. R. Kennedy, traffic manager, Pittsburg, Pa.; Pressed Steel Car Company, H. E. Graham, general freight agent, Pittsburg, Pa.; Quaker Oats Company, L. Richards, traffic manager, Chicago, Ill.; Quincy Freight Bureau, L. B. Roswell, commissioner, Quincy, Ill.; Racine-Sattley Company, J. T. Morrison, traffic representative, Racine, Wis.; Receivers and Shippers' Association of Cincinnati, E. E. Williamson, commissioner, Cincinnati, Ohio; Republic Iron and Steel Company, H. R. Moore, traffic manager, Pittsburg, Pa.; Republic Metalware Company, H. W. Ballinger, traffic manager, Chicago, Ill.; R. J. Reynolds Tobacco Company, J. L. Graham, traffic manager, Winston Salem, N. C.; J. L. Roberts, 17 Battery place, New York City; Rockford Manufacturers and Shippers' Association, C. B. Gregory, secretary, Rockford, Ill.; C. H. Rodehaver, traffic manager, 415 Main street, St. Louis, Mo.; Schlitz Brewing Company, C. J. Bertchy, traffic manager, Milwaukee, Wis.; Simmons Manufacturing Company, F. H. Truax, traffic manager, Kenosha, Wis.; Sioux City Commercial Club, C. J. Bell, commissioner, Sioux City, Iowa; Southern Cotton Oil Company, H. W. B. Glover, traffic manager, Atlanta, Ga.; Southern Cypress Manufacturers' Association, E. W. McKay, traffic manager,

1205 Hibernia Building, New Orleans, La.; Spiegel-May-Stern Company, D. T. Talmonde, traffic manager, 1045 Thirty-fifth street, Chicago; Stach Brothers & Co., Charles Sizemore, traffic manager, Louisiana, Mo.; Standard Sanitary Manufacturing Company, J. E. Henry, traffic manager, Pittsburg, Pa.; Sterling Manufacturers and Shippers' Association, W. E. Long, traffic manager, Sterling, Ill.; Stone-Ordean-Wells Company, H. A. Barnsbaw, traffic manager, Duluth, Minn.; The American Tobacco Company, C. S. Keene, traffic manager, 111 Fifth avenue, New York; The Commercial Exchange, Frank E. Marshall, secretary, Philadelphia, Pa.; The Sefton Manufacturing Company, C. W. Wilmore, traffic manager, Chicago, Ill.; Toledo Produce Exchange, H. L. Goemann, traffic manager, Toledo, Ohio; Toledo Chamber of Commerce, C. P. Lamprey, commissioner of transportation, Toledo, Ohio; Traffic Bureau of the Merchants' Exchange, W. R. Wheeler, manager, San Francisco, Cal.; Transportation Bureau, City of Wichita, L. F. Moore, commissioner, Wichita, Kans.; Transportation Bureau of Commercial Club of Kansas City, H. G. Wilson, commissioner, Kansas City, Mo.; United Box Board and Paper Company, C. C. Furgason, traffic manager, 111 Broadway, New York City; United Kansas Portland Cement Company, B. E. Allison, traffic manager, Iola, Kans.; Utica Traffic Bureau, J. E. Hundley, commissioner, Utica, N. Y.; Van Dusen Harrington Company, L. C. Rains, traffic manager, 713 New Chamber of Commerce, Minneapolis, Minn.; Western Association of Shoe Wholesalers, S. W. Campbell, secretary, Chicago, Ill.; Western Fruit Jobbers' Association, E. B. Branch, secretary, 501 First National Bank Building, Omaha, Nebr.; Western Grain Dealers' Association, G. A. Wells, secretary, Des Moines, Iowa; Western Steel Car and Foundry Company, Nathaniel Board, general freight agent, Chicago, Ill.; Western Stoneware Company, C. S. Wise, manager transportation department, Monmouth, Ill.; Wharton Steel Company, G. W. Jackson, superintendent car service, Perth Amboy, N. J.; Wisconsin Pulp and Paper Company, W. D. Hurlbut, traffic manager, 135 Adams street, Chicago, Ill.; Woolson Spice Company, L. G. Macomber, traffic manager, Toledo, Ohio.

NAMES OF MEMBERS NOT APPEARING IN PRESENT ROSTER.

—. T. Slatter, manager, freight bureau, Merchants and Manufacturers' Association, Birmingham, Ala.; G. J. Bradley, Merchants and Manufacturers' Association, Sacramento, Cal.; C. H. Ivers, commissioner, Fort Smith Freight Bureau, Fort Smith, Ark.; M. S. Dean, Anaconda Copper Mining Company, Chicago, Ill.; Lyman F. Culbertson, Thos. Thomson Company, Duluth, Minn.; Geo. R. Reed, Gowen, Peyton, Tivohy Company, Duluth, Minn.; W. A. Mears, manager, transportation bureau, Chamber of Commerce, Seattle, Wash.; M. McFarlin, president, Des Moines Elevator Company, Des Moines, Iowa; A. W. Dowler, T. M., United States Gypsum Company, 200 Monroe street, Chicago, Ill.; E. M. Gleason, T. M., Southwestern States Portland Cement Company, 611 Wilson Building, Dallas, Tex.

G. H. BUSHNELL PRESS COMPANY,
Thompsonville, Conn., December 1, 1909.

NATIONAL INDUSTRIAL TRAFFIC LEAGUE,
St. Louis, Mo.

GENTLEMEN: In regard to the communication in your November issue, the situation is as follows: We were asked to estimate on a heavy machine for New Orleans delivery and we estimated on the machine f. o. b. cars at Thompsonville, and stated the freight rate to our customers, which freight rate was given us by our transportation company, the New York, New Haven and Hartford Company, through its agent on special request for this shipment. The machine was purchased from us, and as the purchasers were supplying this machine for a branch house in New Orleans they wished to prepay the freight, which they asked us to do for them on the quotations made for the rate given us. We prepaid the freight, which was paid to us by the purchasing parties, and some months after the transaction had all been closed up we were sent a bill of freight charges on this account for amounts over and above their quotations amounting, we believe, to something over \$25, with a long explanation of the position of how they got at the rates which, of course, did not interest us at all. We have never yet paid this overcharge although we have been repeatedly urged to do so, but we expect we will have to in the end,

although we consider it anything but a fair transaction. If there is anything further in the way of information we can give you we are at your commands.

We sent this letter on above date addressed as above but it was returned to us December 11, 1909.

Yours, truly,

G. H. BUSHNELL PRESS COMPANY.
M. W. BUSHNELL.

STONE ORDEAN WELLS CO.,
Duluth, Minn., December 11, 1909.

Mr. J. C. LINCOLN,

President National Industrial Traffic League, St. Louis, Mo.

DEAR SIR: I have just come across a case of misquotation of rates which probably will be of interest and value to you.

On February 20, 1907, the Pacific Coast Canning Company shipped to us from Oakland, Cal., a carload of canned fruit. Upon the instructions of the agent of the Southern Pacific Company they routed this car via Southern Pacific Company, Union Pacific, Chicago Great Western, care of Chicago, St. Paul, Minneapolis and Omaha Railway.

The through rate via all lines from California to Duluth on this business was at that time 75 cents. The Chicago, St. Paul, Minneapolis and Omaha Railway, however, are not parties to the rate in connection with the Chicago Great Western Railway, as of course they have their own line to the Missouri River, and consequently prefer to handle it themselves. This, therefore, would necessitate the application of the 75-cent rate up to St. Paul and the local rate to Duluth of 10 cents.

The Chicago, St. Paul, Minneapolis and Omaha Railway are now calling upon us to pay them \$43 additional freight on this car.

I have before me a letter written by the Omaha Railway to the Pacific Coast Canning Company, in which they say:

"The Southern Pacific agent admits his error in making original quotation. Under the circumstances, all charges must be collected, and we would appreciate very much to have you favor us with check to cover."

The Pacific Coast Canning Company decline to pay the undercharge, and it now seems to be up to us. It seems to me that this is a very good illustration of the pernicious effects of the operation of the present interstate commerce law, and this is only one case out of hundreds that occur in the ordinary run of business. If the present Congress does not transact any other business, we hope it will at least make such amendments to the present interstate commerce act that the shippers will have some kind of protection against such misquotation of rates as this.

Yours, truly,

H. A. EARNSHAW.

THE HUMMER CONSTRUCTION COMPANY,
Marion, Ohio, December 4, 1909.

Mr. J. C. LINCOLN,

National Industrial Traffic League, St. Louis, Mo.

DEAR SIR: We are in receipt of your letter of November 22, in the matter of the freight rate given The Hummer Construction Company, by J. E. Hollingshead, general agent of the Burlington Railroad at Hannibal, Mo. In reply thereto, would say that your statement of facts is correct, and we will inclosing you written copy of Mr. Hollingshead for the shipment of this lumber and machinery to Pennville, Ind. The loss incurred by reason of the violation of this written obligation was about \$600.

We should indeed be very glad to cooperate with you in any way we can to bring the railroads to the respecting of their contract obligations, as well as other people. If we can be of any further assistance to you, we should be pleased to serve you.

Very truly,

THE HUMMER CONSTRUCTION COMPANY,
By D. R. CRISSINGER, Vice-President.

HANNIBAL, September 22, 1909.

AGENT, NEW CAMBRIA, Mo.

DEAR SIR: Replying to yours under date of the 20th, beg to advise present rates, Quincy, Ill., to Pennville, Ind., on lumber, carload lots, is 11 cents per hundredweight; on machinery, minimum carload weight 24,000, 15½ cents per hundredweight. Add local rates, waybill to Chicago, at tariff, care of Chicago and Erie, routing in connection with the Chicago, Burlington and Quincy Railway at Huntington, Ind.

Yours, truly,

J. E. HOLLINGSHEAD.

MERCHANT & EVANS COMPANY.

Philadelphia, July 8, 1909.

Mr. J. C. LINCOLN,*President National Industrial Traffic League, St. Louis, Mo.*

DEAR SIR: Yours of June 12 (A-57-6-C). We inclose herewith a letter from the Colorado Southern, dated June 22, in which you will notice they admit they quoted us May 6, the fifth-class rate of freight from Galveston to Texarkana, 57 cents per hundred instead of 47 cents per hundred. We figured on 57 cents, but found out afterwards that this railroad company made an error, and got in touch with them accordingly. You probably will want to use this letter when you appear before the legislative committee in Washington.

Thanking you for your courtesy, we remain,

Very truly, yours,

W. H. WALTON, T. M.

MERCHANT & EVANS COMPANY,

Philadelphia, June 8, 1909.

Mr. J. C. LINCOLN,*President The National Industrial Traffic League, St. Louis, Mo.*

DEAR SIR: Referring to your letter of May 25 (A-57-6-C), I inclose herewith the original letter of the Kanawha Dispatch, Baltimore, April 14, 1909; Kanawha Dispatch, Philadelphia, April 17, 1909; Merchant & Evans Company, Kansas City, April 26; A. T. & S. F. Co., Philadelphia, April 27.

The shipment that I had reference to in making inquiries for rate or freight was forwarded from Baltimore in January, 1909, at which time the through rate of freight was \$1.21 over the Kanawha Dispatch route and the A. T. & S. F. On April 5 the through rates were changed to \$1.19. Therefore, the rate named to our Kansas City office on April 25 of \$1.25 was not in effect at any time, and the rates named us by the Kanawha Dispatch at Philadelphia, April 17, of \$1.03 and \$1.29 were not in effect at any time. The rate named by the A. T. & S. F., Philadelphia, April 27, of \$1.19 was correct. Inquiries for rates were based on plain sheet copper, completely boxed. We trust these documents will be of some advantage to you in the arguments of your league before the Interstate Commerce Commission.

The writer is of the belief that the only way possible to remedy this matter will be to impose a heavy fine on the transportation companies' representatives who name erroneous rates; that fine to be paid to the Government, of course. This would not necessitate the transportation company protecting a rate that was incorrectly quoted, but it would necessitate the transportation company being careful that they quote the correct rate, and the shipper has the right to insist upon rates being named in writing in every case.

Very truly, yours,

W. H. WALTON,
Traffic Manager.

MERCHANT & EVANS COMPANY,

Kansas City, April 26, 1909.

We have already mailed you the written confirmation of the rate of \$1.25 from Baltimore to Topeka, Kans., in which the railroad quoted us \$1.25 per 100 pounds on this material. We trust that the information received is what you want.

Yours, very truly,

MERCHANT & EVANS COMPANY,
Per T. A. LOCKWOOD.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM,

April 27, 1909.

File 261615-D.

MERCHANT & EVANS COMPANY,

Philadelphia, Pa.

Confirming quotation made over telephone to-day.

| From— | To— | Articles. | In cents, per 100. | |
|--------------------|-------------------|-------------------------|--------------------|----------|
| | | | C. L. | L. C. L. |
| Baltimore, Md..... | Topeka, Kans..... | Sheet copper, boxed. | ..... | 119 |

Consign via Kanawha Dispatch, care Santa Fe at Chicago.

R. H. MILLS,
Agent.

KANAWHA DISPATCH ROUTES.

April 14, 1909.

Mr. W. H. WALTON, T. M.,

Philadelphia, Pa.

DEAR SIR: In reply to yours of the 13th instant. The through rate on plain sheet copper, boxed, from Baltimore, Md., to Topeka, Kans., is \$1.19 per 100 pounds.

Kindly route via the Kanawha Dispatch Routes, c/o., A. T. & S. F. Ry., to be delivered at Baltimore, to the Merchants and Miners Transportation Company's pier, the foot of Gay street, Baltimore, Md.

Respectfully,

B. T. STOKES.
Agent.

KANAWHA DISPATCH ROUTES.

April 17, 1909.

MERCHANT & EVANS COMPANY,

Philadelphia.

GENTLEMEN: Yours of the 16th. If you received a quotation from this office from Baltimore, Md., to Topeka, Kans., on sheet copper boxed LCL \$1.03 per hundred pounds, the same is an error; but no one in the office knows or remembers quoting any such rate, nor can we find any basis on any two classes that will figure this rate. The correct rate, however, is \$1.29 per hundred pounds.

We are sorry if there has been any misunderstanding, but as stated above, no one appears to have any knowledge of quoting any such rate.

Yours, truly,

JAS. HARRIS, *Agent.*

YPSILANTI REED FURNITURE COMPANY,

Ionia, Mich., April 22, 1909.

J. C. LINCOLN,

C/o Merchants Exchange, St. Louis, Mo.

DEAR SIR: We have your letter of April 20, file A 57 6-c, and in reply would advise that we have no objections to furnishing you with all information pertaining to the matter of damages resulting from reason of erroneous quotation referred to in our letter of February 5.

In July, 1905, in reply to our request, we were quoted rates by letter by the division freight agent of the Pere Marquette Railroad to principal points in Texas. With this quotation in our possession we sent our salesmen into that territory and sold the goods on a delivered basis. On arrival of the goods at destination were notified that the shipments were overcharged, and as we

were under obligations to protect our quotation, we instructed our customers to deduct the amount of the freight overcharge in making their remittance to us. In due time we filed claim against the Pere Marquette Railroad for the amount of such overcharge and referred them to their written quotation, but were advised by them that according to the rulings of the Interstate Commerce Commission, it would be illegal to pay these overcharges, that the quotation which was made to us in writing was in error, and that it would be illegal for them to protect the rate so quoted. The amount involved was in all about \$250, and while we have had the matter up with the Interstate Commerce Commission direct, we have been unable to accomplish anything in the way of securing authority for the transportation companies to pay the amount. We are now, however, preparing to take the matter into the courts with a view to determining whether we are entitled to recover the amount of damages sustained through acting on the written advise of the transportation company. If there is any other information which you desire in connection with the case we shall be pleased to furnish it.

Yours, very truly,

YPSILANTI REED FURNITURE COMPANY.

HALL & SONS.

Buffalo, N. Y., March 4, 1907.

Mr. W. H. FREDERICK.

G. T. M., Black Rock Manufacturers' Association.

DEAR SIR: We are inclosing herewith a claim against the N. Y. C. and H. R. R. R. for overcharge on fire clay from Lucinda, Pa., to Black Rock.

We understand that though this claim is really against the L. S. and M. S. R. R. it must be made out against the N. Y. C. and H. R. R. R., as the money was paid to them.

This clay comes from Lucinda, Pa., which is on the narrow-gauge division of the B. and O. R. R. between Foxburg, Pa., and Kane, Pa. From Kane it is handled by the B. L. and K. R. R. to Mount Jewett, from there to Buffalo by the Erie Railroad, and the rate to Black Rock is \$2.15 per ton.

Late in September, or early in October, 1906, Mr. R. E. Gavin, representing the L. S. and M. S. R. R., called on us, in answer to an inquiry, and stated that they would like to handle this freight by way of the B. and O. R. R. to Foxburg, Pa., and their road from Painesville; that they had been endeavoring to secure a rate of \$2.15 and they would protect this rate on two cars, as a trial shipment.

These two cars (No. 8946 C. L. and W. and No. 8102 C. L. and W.) were received and the freight bills paid at \$2.15 per ton on October 31, 1906.

Shortly after this Mr. Gavin called at the office and told the writer that the proportion of freight that the L. S. and M. S. R. R. would receive on these cars from Painesville to Black Rock was small, but they wanted to handle the material. I said to him, "Then it is all right to ship the clay through on this rate?" Mr. Gavin told me to go ahead. We therefore ordered 10 or 12 cars shipped via Painesville and the L. S. and M. S., and four cars (No. 39039 B. and O., No. 55298 B. and O., No. 51656 B. and O., and No. 170384 P. R. R.) came through at this rate, and the freight was paid on car No. 39039 on November 10, 1906; car No. 55298 on December 8, 1906; cars 51656 and 170384 on December 14. The original freight bills for the four cars are attached to this claim.

About two or three weeks later the L. S. and M. S. R. R. sent in claims for additional freight on these four cars, claiming that the rate of \$2.15 per ton was in error. They also rendered bills on eight more cars at the advanced rate. We have attached to this claim the bills for additional freight, also the bills for the full amount on the eight cars referred to.

When the claim was made for this additional freight, the cars ordered had already been shipped and we were obliged to allow them to come through. If any had not been shipped at that time, we supposed that the claim was in error and did not stop them.

Inasmuch as this rate was given to us under the circumstances stated above, we feel that there must have been some authorization for the rate by the L. S. and M. S., and we also feel that, as we were acting under the supposition that this freight rate was correct, we should not be obliged to pay this additional freight, particularly as we were able to get the clay shipped through by another route at \$2.15 per ton, and we certainly would not have had the shipment made by the L. S. and M. S. had we known that there was to be any excess charge.

The writer has several times talked with you about our idea of the method of pressing this claim. If anything further than the papers inclosed is necessary, please advise. We think the claim is a just one and we trust that you will be able to collect it.

Very truly yours,

HALL & SONS,
(Signed) C. M. HELMER,
Manager.

CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY. ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY. CHICAGO AND EASTERN ILLINOIS RAILROAD COMPANY.

ST. LOUIS, Mo., March 6, 1909.

HUNTER BROTHERS MILLING COMPANY, *City.*

GENTLEMEN: Your favors recent dates, file 4627, requesting reply to yours 12th ultimo, with reference to ours of the 8th ultimo, covering claim that we declined for alleged overcharge in rate. The claimed rate of 25 cents was published at one time but subsequently canceled, and when making you the quotation of 25 cents per hundredweight our rate clerk overlooked the amendment cancelling this rate. This replies to the first portion of your letter and it is the only explanation we can make for this erroneous quotation. We agree with you that an error of this kind works a hardship upon the shipper, but in the eyes of the law is not authority for our protecting anything but the published tariff rate, and under the ruling of the Interstate Commerce Commission we can not legally protect 25 cents rate, for it was not in effect at the time this shipment moved.

Yours, truly,

A. D. MURRAY,
General Agent.

CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY. ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY. CHICAGO AND EASTERN ILLINOIS RAILROAD COMPANY.

ST. LOUIS, Mo., March 4, 1909.

HUNTER BROTHERS MILLING COMPANY, *City.*

GENTLEMEN: Return herewith your claim 4876, amount \$100, alleged overcharge on car of C. S. meal from Guthrie, Okla., to Folsom, N. Mex. We quoted you rate of 25 cents from Guthrie, Okla., to some points in New Mexico on the Colorado and Southern, but our rate clerk's records do not indicate that he made this quotation. At any rate, the 25 cents is not published and can not be protected whether or not we made the quotation. The best rate we are able to check is 62 cents, for this is a published through rate, and therefore the combination of locals 25 and 20, as charged, can not be legally protected. We have been obliged to decline similar claims and are indeed sorry that this one must be turned down also.

Yours, truly,

A. D. MURRAY,
General Agent.

CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY. ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY. CHICAGO AND EASTERN ILLINOIS RAILROAD COMPANY.

ST. LOUIS, Mo., January 21, 1909.

HUNTER BROTHERS MILLING COMPANY,
City.

GENTLEMEN: Returning herewith papers in your claim 4627, filed to recover loss sustained through erroneous rate quotation on the part of our rate clerk.

As much as we regret to decline your claim, we must do so, as the law will not permit us to protect anything but published tariff rate. Trusting you will see this in the proper light and allow our records to remain closed, we are,

Yours, truly,

A. D. MURRAY,
General Agent.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY. ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY. CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY.

ST. LOUIS, Mo., January 5, 1909.

HUNTER BROTHERS MILLING COMPANY, *City*.

GENTLEMEN: Your favor 2d instant, file 4876, regarding C. & A. 7193, from Guthrie, Okla., December 23, destined Folsom, N. Mex.

I extremely regret to advise you that this is another instance where we have made you an erroneous quotation. The 25 cent rate is not applicable, but we are not able to check the 47½ cent rate that you claim is being assessed by the agent at destination. Have wired both our people and general freight agent of the Colorado and Southern, asking for tariff authority for this rate. The object of this letter is to have you understand that the 25 cent rate can not be protected and I presume we will find 47½ cents to be the correct rate.

Yours, truly,

A. D. MURRAY, *General Agent.*

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY. ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY. CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY.

ST. LOUIS, Mo., February 8, 1909.

HUNTER BROTHERS MILLING COMPANY, *City*.

GENTLEMEN: While this claim was addressed to the undersigned, the papers have just reached us from Mr. Macgregor, F. C. A., Frisco, and that line not being interested same was referred to us. As much as we regret the action, we are obliged to reiterate our former statement that it is absolutely impossible for us to entertain this claim, for the law will not permit of our protecting an erroneous quotation. In this instance we acknowledge that we quoted you a rate of 25 cents per hundredweight, but the published tariff rate is 55 cents per hundredweight, and the very best figure that can be protected. I observe there is an overcharge according to your figures of 6,000 pounds in the weight, and if you will reduce your claim to this basis we will be pleased to put it to our claim department for investigation.

Yours, truly,

A. D. MURRAY,
General Agent.

MARCH 19, 1909.

The HUNTER BROTHERS MILLING COMPANY,
St. Louis, Mo.

GENTLEMEN: Returning papers in your claim 4876-4627, would advise that Commissioner Cockrell in his letter of March 13, has indicated the line of procedure, which would be through the medium of informal complaint seeking reparation. The success of this informal proceeding necessarily being dependent upon the attitude assumed by the carrier, failing in which, it would then be necessary to proceed by formal complaint.

It is my judgment that the course left open to us by which you can secure protection of the 25-cent rate is fortunately a very easy road to travel, inasmuch as the Chicago, Rock Island and Pacific Railway have now established the 25-cent rate on cotton-seed meal from Guthrie, Okla., to Des Moines and Folsom, N. Mex., so that all it will be necessary for the Rock Island people to do is to file with the Commission petition prescribed and furnished by the Commission asking authority to reduce charges to the basis of 25 cents per hundred as now authorized.

Chicago, Rock Island and Pacific Tariff 10199-B, Supplement 24, authorizes, effective with March 15, the rate of 25 cents per hundred on cotton-seed meal, cake and hulls, carloads, minimum 30,000 pounds from Guthrie, Okla., to Denver, Colo., and points taking same rates. In Item 28-A, same supplement, reference is made to Trans-Missouri Tariff 11-F, Chicago, Rock Island and Pacific 25700, for list of points taking the Denver, Colo., rate. In this list will be found Folsom and Des Moines, N. Mex., so that inasmuch as the Rock Island have established the rate subject of your controversy, they need only to proceed informally in procuring necessary authority to reimburse you.

Yours, truly,

APRIL 5, 1909.

The HUNTER-ROBINSON-WENZ MILLING COMPANY,
921 Pierce Building, St. Louis, Mo.

GENTLEMEN: Acknowledging yours of March 31, respecting rate on bran from East St. Louis, Ill., to Paoli, Ind., via Southern Railway: Our examination into the matter discloses the following record:

Southern Railway tariff 44S did provide for an 8-cent rate. This rate was canceled on March 2 by tariff No. C-1090. Tariff No. C-1090 carries only class rates, and as grain takes sixth-class rate the rate under this tariff would be 12 cents per 100 pounds. Effective with April 5, Tariff No. C-1243 is issued and provides for rates of 10 cents per 100 pounds.

We are unable to check a 10-cent rate as effective between March 2 and April 5.

Under the present law, or rather, the interstate-commerce act, I do not know how you could secure reparation for the erroneous quotation, as the law declares that the rate published and on file at Washington is the legal rate, which can not be departed from by either shipper or carrier.

The question as to whether a civil action would be lodged against the Southern Railway Company for damages on account of an erroneous quotation has not been determined by the federal court since the enactment of the Elkins bill. Some of the state courts have, however, held that shipper can recover damages occasioned by an erroneous quotation.

Yours, truly,

HUNTER-ROBINSON-WENZ MILLING COMPANY,
St. Louis, March 31, 1909.

Mr. J. C. LINCOLN,
Traffic Manager, Merchants' Exchange, City.

DEAR SIR: The Southern Railway has had in effect for the last year the rate of 8 cents per 100 pounds on bran from East St. Louis to Paoli, Ind. We sold a car in this town on March 24. Before confirming the sale we called up the Southern Railway, and they stated that the rate of 8 cents was still in effect. We applied for bill of lading several days later and were forced to pay 10-cent rate. The Southern showed us their new tariff, effective March 2, which they received at their commercial office March 20, four days prior to their naming us the 8-cent rate, when the rate was actually 10 cents per hundredweight.

This is certainly gross carelessness on the part of the Southern Railway, and if there is any possible action that you can take, or suggest, whereby we can secure reimbursement for the \$8 that we are out of pocket, absolutely through no fault of ours, we will appreciate your letting us hear from you in this regard.

Yours, very truly,

HUNTER-ROBINSON-WENZ MILLING Co.
A. C. ROBINSON.

L. E. & St. L. (So. Ry.) 448 as amended named 8 cents hundredweight. Canceled March 2, 1909, by C-1090. C-1090 carries only class rate 12 cents.

C-1243 E, effect April 5, 1909, names rate of 10 cents hundredweight.

Can not check 10 cents, March 24, 1909.

Mr. Hannigan acknowledges erroneous quotation.

ST. LOUIS, April 12, 1909.

Mr. E. J. McVANN,
Secretary Omaha Grain Exchange, Omaha.

DEAR SIR: This will acknowledge yours of April 9, respecting erroneous quotation by the New York Central lines. I am glad to have this communication, to be placed with my files bearing on this subject of erroneous quotations as documentary evidence.

I have several other cases of similar character.

Yours, truly,

OMAHA TRAIN EXCHANGE,
Omaha, April 9, 1909.

Mr. J. C. LINCOLN,
President, St. Louis, Mo.

DEAR SIR: The attached papers are respectfully referred to you as indicating clearly the evil effect of the present status of the law which holds all shippers to the observance of the legal tariff rates, but does not impose any responsibility on the railroads in connection with the quotation of those rates. I wish you would place these papers with your file on this subject, as they will furnish you a perfect and concrete illustration which may be used in any argument you desire to make before the Interstate Commerce committees of the Senate or House of Representatives.

Yours, truly,

E. J. McVANN.

OMAHA, March 30, 1909.

Mr. E. J. McVANN.

Secretary Omaha Grain Exchange, Omaha, Nebr.

DEAR SIR: We beg to hand you herewith some correspondence, including papers in our claim O-C-308, presented against the N. Y. C. Lines for protection of Boston rate from Chicago to St. Regis Falls, N. Y. We were advised by Mr. Monks, personally, that St. Regis Falls took the Boston rate, and at the time we insisted that he confirm this quotation, as we were compelled to make delivered prices and would have to protect whatever rate he quoted us.

The writer recalls very well giving Mr. Monge some thirty odd minutes to look up the rate a second time, and was assured the quotation was correct. You will note the result—expressions of regret that they overlooked certain reference numbers at an expense to us of \$16.59 on this one car.

We understand you are a member of the committee that is in charge of the proposed amendment to the law making the railroads responsible for rates quoted.

Yours, truly,

J. A. KUHN,
Manager Transportation.

MARCH 29, 1909.

Mr. J. J. MONKS,

Agent New York Central Line, Omaha, Nebr.

DEAR SIR: Your letter of March 26 returning papers in our claim O-C-303. We note your suggestion that you trust your explanation will enable us to dispose of the matter to the satisfaction of our customers. For your information: We made delivered price and, in accordance with all business ethics, must stand by that price. In other words, we must stand by our contract, and it is only to be regretted there is not some law to compel the railroad company to stand by its contract.

Yours truly,

Manager of Transportation.

OMAHA, NEBR., March 25, 1909.

Mr. J. J. Monks, agent New York Central line, Omaha, to The Updike Grain Co., dr., for overcharge on corn shipped from Chicago to St. Regis Falls, N. Y.

Date of way bill, Feb. 25; number of way bill, 8433; car number, N. W. 35582; hopper and track scale weight, 55,300; overcharge, 3 cents per hundred-weight; amount, \$16.59.

Declined.

Remarks: Original expense bill attached.

MISSOURI VALLEY, IOWA, February 18, 1909.

Via Chicago and Northwestern Railway.

From the Updike Grain Company, Omaha.

Pro. No., 52; car initials, C. & N. W.; car number, 35582; originating point, Battle Creek; car initials and number, C. & N. W., 68034; waybill date and number, No. 57, 4-12-07.

Consignee: Order, the U. G. Co., notify Douglass & Southworth.
 Destination: St. Regis Falls, N. Y., to N. Y. C. lines at Chicago.
 Transit, Iowa, Chicago to Chicago; billed, G. S. B.; description, corn; weight, 55,300; rate, 18 cents; freight prepaid from Chicago; order No. 5812; grade No. 2 mixed; solid basis, St. Regis.
 Prepaid to Chicago.

FREIGHT BILL.

ST. REGIS FALLS, N. Y., March 4, 1909.

Consignee: Order, Updike Grain Co., notify D. & S.
 _____ To New York and Ottawa Railway Company Dr., for charges
 on freight from Chicago, Ill.
 Waybill date, 2-25; waybill number, 8433; car initials and number, C. N. W., 35582; weight, 55,300; rate, 21; original point of shipment, Missouri Valley, Iowa; freight, \$116.13; amount credited, \$99.54; \$16.59, amount our due.
 Articles and marks: Corn, S. L. & C., W. Ry. Wts.
 Total to collect, \$116.13.
 Received payment for the company.

F. H. BUDROW, Agent.

All carload freight shall be subject to a charge for car service of \$1 per car for each 24 hours' detention, or fractional part thereof, after the expiration of 48 hours from its arrival.

FREIGHT TRAFFIC DEPARTMENT.
 NEW YORK CENTRAL LINES,
 Omaha, Nebr., March 26, 1909.

Claim number, O-C-303. Our number, 211.

Mr. J. A. KUHN,
Manager Transportation Department,
The Updike Grain Company, Omaha, Nebr.

DEAR SIR: Replying to your favor of 25th instant, and returning papers in claim described above, which accompanied same:

We regret exceedingly the fact that in our hurry to quote you the rate to St. Regis Falls, N. Y., reference numbers were entirely overlooked, one of which provides for an arbitrary rate of 3 cents per 100 pounds over the Boston basis on all freight in carload lots for this station.

Trusting this explanation of the difficulty will enable you to dispose of the matter to the entire satisfaction of your customer, we beg to remain,

Yours, very truly,

J. J. MONKS, Commercial Agent.

EVENING SESSION.

Pursuant to order of recess, the committee reassembled at 8 o'clock p. m., Hon. James R. Mann (chairman) presiding.

The CHAIRMAN. When you are ready, Mr. Lincoln, we will hear you.

Mr. TOWNSEND. Mr. Lincoln, did I understand you to say there were going to be some gentlemen here to discuss the express-company proposition?

STATEMENT OF MR. J. C. LINCOLN, OF ST. LOUIS, MO., PRESIDENT OF THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE.

Mr. LINCOLN. I had expected Mr. Barlow here, who was intimately acquainted with the express-company proposition, and who could give information upon that subject.

I was discussing at the time of adjournment the question of requiring the railroads to put the rates in writing. Before completing that subject there was an additional suggestion which I had to offer, and that was as to the insertion of rates in bills of lading. The bill of lading, as adopted by the carriers upon the recommendation of the Interstate Commerce Commission, carries a provision to the effect that the rate of freight paid from blank to blank is blank cents per hundred pounds. There is nothing in the act requiring the carriers to insert in the bill of lading or receipt the legal rate that the shipment would be subject to. The bill of lading carries a saving clause that the property is transported subject to the legal rate, but notwithstanding the space is provided for, there is no provision for the insertion of the rate. I only bring this question up in connection with the section 8 as a suggestion to your committee for the incorporation of a slight amendment or change to section 20 of the interstate commerce act known as the "Carmack amendment," which requires carriers to give a receipt or bill of lading for the property. And in making this suggestion, it is meant to be suggestive so that the shipper may have some knowledge in the bill of lading as to what is the legal rate, but it does not carry with it a provision for it to be treated as a misdemeanor to the extent that we do in regard to erroneous quotations or misstatement of the rate, and that is the reason why I have suggested that it be added to section 20 of the act rather than, as proposed, to section 8. The suggestion I have to offer for the consideration of your committee is in connection with the Carmack amendment, section 20. I can refer to it here. It provides that "any common carrier, railroad or transportation company, receiving property for transportation from a point in one State to a point in another State, shall issue a receipt or bill of lading therefor," etc.

We want to provide that "every common carrier subject to the provisions of this act shall, upon request, include in and make a part of the bill of lading or receipt issued by it covering property delivered to it for shipment, subject to the provisions of the act, the lawful rate applicable to the transportation of the property carried by the said bill of lading or receipt."

But, as I say, the idea is to make that suggestive, so that the railroad may insert for the guidance of the shipper and receiver what is the lawful rate. The provision in section 8 makes it a misdemeanor for a quotation or misstatement or erroneous statement of the legal rate to be made. The bill of lading is a document on which the property is transported and is tendered after the car is loaded. Therefore it is not tendered on the contract, so that the misdemeanor fine of \$250 should not be confined or applied to the bill of lading but to the erroneous quotation. I trust I have made clear the distinction between the two. That is the suggestion, so that the bill of lading will carry the provisions of the legal rate for the guidance of shippers.

The CHAIRMAN. Mr. Lincoln, in the bill which I have introduced the provision which gives the Interstate Commerce Commission authority to prescribe with reference to the issue, form, or substance of tickets, bills of lading, receipts, and so forth, would not that cover the entire case?

Mr. LINCOLN. Will you refer me to the particular page, Mr. Chairman, please? I have read your bill but I do not locate the page.

The CHAIRMAN. In one place it is on page 4, and in another place on page 16; page 16, section 15 of the bill.

Mr. LINCOLN. I have not so construed it, Mr. Chairman, when I read it, as making in the bill of lading a requirement for a statement of the rate. I did not understand that it intended to include the insertion of the rate.

The CHAIRMAN. They do not claim to have the legal authority to prescribe the rate now?

Mr. LINCOLN. No; they do not claim to. They have made a recommendation as to the form, although they have not the authority to prescribe the form of it.

The CHAIRMAN. If they had the authority to prescribe the form and substance of a bill of lading, would not that cover the case?

Mr. LINCOLN. Well, it possibly would, Mr. Chairman, if it should prescribe the form and substance and what should be included in the bill of lading.

Mr. TOWNSEND. If you provide that they shall quote the correct rate in writing, and you have that lawful rate in writing, what advantage is there in providing that it shall be correct in the bill of lading?

Mr. LINCOLN. I would say, your honor, that 25 out of 30 shipments are made without a request for the rate in writing, and they simply tender the property and want it inserted in the bill of lading for the guidance of the shipper and the consignee as to what is the legal charge. The rate is inserted when the request is made in writing, where they are making contracts based upon a particular movement of freight.

I was talking with Mr. Bell about that this evening. He gets orders from all over the country for particular shipments of hardware and pipe, and things like that, which will be shipped regardless of the rate. My idea in making this suggestion was that the bill of lading would have an indication in it of what is the legal rate, so that the consignee would know the proper charge to be paid. But an error might occur in there. We do not claim that that shipment was based on a certain rate, because it was not. We simply want to get the insertion of the rate in that receipt required by law. If we make a contract based upon a quotation and it is a misstatement, then we think the railroad company should be treated as having committed a misdemeanor, but we do not want the misdemeanor to apply to this bill-of-lading provision, because the bill of lading is never presented until the property is loaded on the car. When the property is surrendered, here is your receipt. We ask, when you surrender the receipt, that the rate should be inserted merely as a matter of guidance, not that the railroad should be responsible if an error is made in the insertion of the bill of lading, because we have made no contract.

Mr. TOWNSEND. It is for the convenience of the shipper?

Mr. LINCOLN. Yes; to enable the receiver to say, "This is the proper rate." I will say that a great many shippers do insert the rate in the bill of lading. I was informed by Mr. Bell this evening that a great many consignees ask and insist that the rate shall be in-

serted in the bill of lading, so that they can know what charge shall be made at destination.

Mr. TOWNSEND. Do the railroads object to that?

Mr. LINCOLN. I only found one case where the railroad had given instructions not to insert the rate in the bill of lading, and when I called the attention of the vice-president of the railroad to that instruction he immediately had it canceled.

The CHAIRMAN. Would it be practicable to insert the rate without making delay in all cases where there was no through rate established?

Mr. LINCOLN. Yes, I think, Mr. Chairman, absolutely; because the agent at that station has to know what the rate is to make his billing.

The CHAIRMAN. Whether there is a through rate or not?

Mr. LINCOLN. He is presumed, under the law, to know which is the cheapest rate as to the through movements; that is, he is presumed to exercise due care and caution in advising the shipper as to the proper road. But we are advising this only as to the through rate, where a joint and local tariff is published.

The CHAIRMAN. Is that the way your proposition read? I did not so understand it.

Mr. LINCOLN. I do not believe it would cover in that way a rate made up of combinations. "Every common carrier subject to the provisions of this act shall, upon request, include in and make a part of a bill of lading or receipt issued by it covering property delivered to it for shipment subject to the provisions of the act, the lawful rate applicable to the transportation of the property covered by said bill of lading or receipt."

The CHAIRMAN. Suppose the property was being sent from Oregon to Maine, and there was no through rate established. What then?

Mr. LINCOLN. I see the point made very clearly. They could only issue the bill of lading to their connections, subject to the legal tariff rate beyond their connections. It requires two propositions.

Mr. ADAMSON. Neither party is bound by that figure unless in fact it be a true rate. Neither shipper nor receiver is bound by it except in that case.

Mr. LINCOLN. Unless it happens to be the legal rate.

Mr. ADAMSON. The local agent at the point of delivery must find out what the correct rate is in order to charge it. Your proposition would put the obligation upon both the agent receiving and the agent delivering to make the same investigation.

Mr. LINCOLN. The duty is on the foreign agent.

Mr. ADAMSON. Your proposition would put it on both agents. Both of them would have to look it up.

Mr. LINCOLN. No; the delivery agent has to execute the document.

Mr. ADAMSON. No; in order to put it there, the forwarding agent has got to investigate it, and the man who delivers it has got to investigate it. Your proposition is to make both men study the rate on every shipment.

Mr. LINCOLN. Both men should study the rate under the law in every shipment. The receiving and forwarding agents are so required under the law—in the case of the receiving agent to see that the property is billed according to the tariff rates, and the delivery agent follows those instructions. If an error has been made it is the duty of the delivery agent to see that the proper rate is applied.

Mr. RICHARDSON. You are not contemplating to any great extent that the rate shall be paid until the property is delivered to the consignee?

Mr. LINCOLN. Not unless the shipper wants to prepay his charges, and then he can get a prepaid bill of lading.

Mr. RICHARDSON. Still, it says upon its face on the bill of lading that the charges are prepaid from the initial place. That does not become true until it gets there. The bill of lading has nothing to protect you in respect to the amount of money you have paid.

Mr. LINCOLN. In a case of prepaid item the bill of lading will not protect you if it is less than the legal rate.

Mr. RICHARDSON. As I understand you, the bill of lading is to give satisfaction to the man who is easily satisfied upon the face of the facts stated.

Mr. LINCOLN. It is practically giving notice to the consignee of what is the legal rate and the charges he should pay at destination. If the statement in the bill of lading is erroneous or wrong, it is still the duty of the delivering agent to collect the legal tariff rate. But if notice is contained in the bill of lading of the rate at which the shipment is supposed to move, it immediately makes an inquiry necessary on the part of the delivery agent as to whether that was correct or not, and if the bill of lading was not correct, it is the duty of the agent to collect the legal rate.

Mr. RICHARDSON. Let me ask you right there, for information: If the bill of lading was given and the charges prepaid, and the consignee found out afterwards that he had paid too much, would you refund to him promptly, or wait until the case went through the rounds?

Mr. LINCOLN. Well, I am not a railroad man.

Mr. RICHARDSON. I know; but I am asking you for information.

Mr. LINCOLN. I would say it was their duty to promptly refund the overcharge or claim after they know what the legal rate is. If they retain that money after they know the legal rate they are violating the law.

Mr. RICHARDSON. I can not get into my head why it is that the man at the initial point does not know what the rates are, and why he can not give the rates correctly at the beginning from the place at which the shipment starts to the place of delivery. If the man is a competent railroad man, and knows his business, it seems to me he ought to be able to tell exactly what it is going to cost the shipper.

Mr. LINCOLN. I might say, in that connection, that that is what we desire these amendments to the interstate commerce act for, so that we shall be allowed to receive accurate information, and we do not want to place any undue penalty upon the carrier. We only wish to place a reasonable penalty on the carrier in case of a misdemeanor. But we believe that these provisions asked for and incorporated in this bill will, if enacted, bring about better conditions and the employment of more expert men than are now employed, who will have more accurate knowledge of the rate, and I also think it will bring about a marked improvement in the publication of tariffs. The railroads have made a large improvement in the publication of tariffs recently.

Mr. RICHARDSON. I suppose you understand that there is a large number of people who claim that the bill of lading shall have the same sanctity as a bank note?

Mr. LINCOLN. Yes. I believe that the ordinary bill of lading should have some protection as a bankable document.

Mr. RICHARDSON. It seems to me if that were carried out, under the uncertain way that the bill of lading is issued now, not bearing upon its face an obligation to anybody, it would place the railroads in a bad fix if the bill of lading was established in the sanctity that the bank note has.

Mr. LINCOLN. The sanction of the bank note does not involve a railroad rate. It is payable until that document is surrendered.

Mr. ADAMSON. I was wondering whether your answer to Judge Richardson's question anticipated a question I was going to raise, as to whether the improvement you speak of meant improving the capacity of the railroad agent. I was going to say, from an observation somewhat extended, that the average railroad agent did not possess superior intelligence and business capacity beyond the average of men engaged in business and shipping, and I wanted to ask what occult secret or difficulty there was about it whereby the ordinary business men and shippers could not read and study these rate bills and schedules as well as the ordinary agent?

Mr. LINCOLN. The ordinary agent lives with the tariffs that are on file in the station. The ordinary business man has not the tariffs at all. He has to go to the station and examine them, and there are probably 500 tariffs in the station. The agent in the conduct of his business has to be notified on his tariff, and he has to make his expense bills and way bills—a duty that is not devolved upon the shipper at all. The shipper can not be informed upon the tariffs. He is not dealing with them. He has nothing to do with the compilation of them, and he has no tests as against the tariff such as are furnished by bills coming in for freight, which must be checked up with the tariff. The agent's line of business is to be conversant with the tariff.

Mr. ADAMSON. If the local agents only are to be charged with information and knowledge on this subject, can you tell us what is the purpose of publishing as well as filing these rates? Is not the shipper also to study them and be informed about them?

Mr. LINCOLN. I do not believe in my own mind that the filing of these tariffs at a station benefits the shipper at all, but they are filed necessarily for the information and guidance of the agent that he may assess the proper rate.

Mr. ADAMSON. They are posted there, not for his benefit but for the benefit of the public. They are filed and posted there for the benefit of the shipper, also.

Mr. LINCOLN. Of course the shippers can not have access to the records in Washington.

Mr. ADAMSON. You explained this morning how you got possession of these publications if a person wanted them, and you said you could get them even if you had to pay 25 cents for them.

Mr. LINCOLN. I will say this, that I have 4,500 tariffs on file in my office at St. Louis to answer rate questions.

Mr. ADAMSON. They are no more complicated to you than to a local agent, are they?

Mr. LINCOLN. Yes, sir; they are. A shipper in St. Louis has the same complication that I have. I would have to go through the files and see what the tariffs are. You would have to locate that tariff. A very large amount of business is handled in the kind of cases I am talking about. The agent knows those tariffs. It is his business to know, because he has to revise his waybills and make his expense bills on them. It is necessary for him to know them. It is not necessary for the shipper. It is not part of his business to have them on file in his office, and he can not become acquainted with them. Every set of tariffs really requires three tariffs. There is a duplication of rates in those tariffs. Part of them are subject to the Illinois classification; part of them are subject to the western classification. The information I have there is very confusing, though not necessarily confusing to the man dealing with them every day; but to the shipper who is not conversant with the details of them they would be confusing, and he is bound to be misled, because he has two, apparently, although in the end he has one. One refers to the other, and if it conflicts this rate will govern.

Mr. ESCHE. In view of the fact that there are from six to seven hundred tariffs filed per day with the commission, it would be a practical impossibility, would it not, for the shipper to post himself upon the rates?

Mr. LINCOLN. Absolutely impossible, as I stated to the gentleman just now. I receive in my office an average of 50 tariffs a day. I could not read those tariffs over in a day. I have to have them filed by separate numbers and put them in the right place, and then when a man comes in and asks me the rate I have to examine the file to find the rate. The shipper can not do that.

The CHAIRMAN. Is it equally impossible where a railroad maintains one person to act as general freight agent and ticket agent and baggageman and everything else. Is it practicable for that man to understand the tariffs?

Mr. LINCOLN. That agent is only dealing with tariffs to and from his station, and he is better informed as to those, perhaps, than a shipper can be.

The CHAIRMAN. I am not asking whether he is better informed than a shipper could be, but whether it is possible for him to be informed.

Mr. LINCOLN. No; he can not be informed on a great many tariffs, but he always has opportunity to communicate with the proper authorities to ascertain what is the correct rate.

The CHAIRMAN. That is what I was trying to get at—whether it was possible for the average country agent to give the rate off the particular line of road he was on without getting information or communicating with the general office.

Mr. LINCOLN. Not the assistant freight agent or the large terminal agent, but the agent at the terminal office, will have to find out what the rate is when it is based on a combination. If there is a joint through rate with a tariff, that tariff is on file in his station, but he can not give the combination rate.

The CHAIRMAN. He can give that rate if there is no amendment of it, concerning which he has not yet been well informed?

Mr. LINCOLN. He is supposed, under the law, to have on file an amendment of every tariff.

The CHAIRMAN. Both of you are supposed to know the rate under the law—the carrier and the shipper. You want that changed. The only question is to have it so arranged that there is an opportunity for somebody who can know to furnish the true rate. That would require somebody at the main office in any case where there is complication.

Mr. LINCOLN. The ascertainment of the combination rate would require some one at the main office; yes, sir, Mr. Chairman.

The CHAIRMAN. Don't you think the greatest benefit that would come out of legislation of this sort would be a simplification of rates?

Mr. LINCOLN. I believe, Mr. Chairman, and I am conscientious in that belief, that the railroads are working to the end of simplifying their tariffs. It is very slow work, but there has been very marked improvement in tariffs. It is still complicated; and when you take the commerce of our country from the Atlantic to the Pacific you will realize that these very complicated tariffs are those reaching from one very large territory to another very large territory, like the transcontinental rates from the eastern territory to the Pacific coast, and these from all points east of the Ohio River to all points in Texas. Other tariffs are simple as compared with them, and as to those there is no trouble about finding out the proper rate; but these complex tariffs, these complicated tariffs, are difficult of ascertainment, and always will be.

Mr. ADAMSON. I think in your talk about the shipper understanding these rates you overlook one distinction. I understand how you are probably better prepared than these constituents of yours in these contributory stations are to come here and obtain information and communicate with the railroads and the Interstate Commerce Commission, but when you talk about a particular man learning a rate, I confess if you tried to represent all of them and know everything for them you would have to know all the rates between all points, each one of which is differently situated from the other. Each one of them is like the local agent, who simply knows the rate between his town and the other points. You say that the local agent has only to tell what the rate is between his station and the other points. Is not that the situation with your other constituents—each one has to deal with rates between his place and the other places?

Mr. LINCOLN. Yes. The railroad man has nothing to do with business. The man engaged in business has his business to look after. The transportation is simply a part of his business. He goes to the railroad company and asks what the rates are. He has to rely upon that information that is given him. You take the shipper who is shipping to New England and to the Southeast and to Texas. He would have to know a whole line of tariffs. He can not know it. He would have to know the rates over 14 different roads out of St. Louis. He can not go into those files to ascertain those rates. He has to rely upon the information that is given to him by the carrier.

If it is the wish of the committee, I having stated all that I have to state upon that subject, if there is no further question on it, I would ask if you desire me to ascertain if there is anyone else here who desires to make a statement in regard to it.

The CHAIRMAN. Do just as you please.

Mr. TOWNSEND. You can go on and complete your statement, or call them in, just as you wish.

Mr. LINCOLN. I thought perhaps you might want to hear another statement on this same branch.

The CHAIRMAN. That does not make any difference.

Mr. TOWNSEND. If you have some man who wants to get away and will address himself to one particular thing, all right; but you can suit yourself as to that.

Mr. LINCOLN. The next feature of the bill I wish to discuss is the right of the shipper to route freight, and that is on page 19 of House bill 17536, commencing with line 8. I will make a statement in regard to that.

There is a further provision which we believe should be enacted as an amendment to the commerce act, thereby making it the law, and that is the right of shipper to route his own freight. Carriers at the present time are injecting into their tariffs the right of initial line to route freight to final destination. A strict application of the rule permitting initial carriers to route freight would make possible the pooling of business and the offering up for sale in the distribution thereof of the tonnage it originates. It would leave the small lines dependent upon the large trunk lines for favors.

If the initial carrier should have the unqualified right to route freight, there would be no necessity for the establishment by connecting and delivering carriers of agencies in large shipping communities or the maintenance of traveling freight agents, creating thereby competition between carriers and competition of service. It would deprive shipper of availing himself of those lines by which he received the best service—the best care and attention to his business.

The carrier has no property right in the goods to be transported. The right, therefore, of directing how his goods shall be transported should rest with the shipper. Carriers are parties to and participating in joint through rates, via various through routes, given legal effect as required by law, by the filing thereof with the Interstate Commerce Commission. In so legalizing these joint rates, by establishing such through routes, the shipper should have the right in his discretion to prescribe which one of these through routes and joint rates he may desire to use. It is frequently necessary that the shipper shall know the route on which his property is to move, to safeguard it while en route to final destination; to make necessary arrangements for its receipt, the payment of charges, and delivery upon arrival at destination.

We therefore propose that the law should be amended so as to permit the shipper, in delivering property to a common carrier for transportation, to avail himself of the right to designate and direct over what connecting line, forming a part of the joint through route, said property shall be transported; that it shall be the duty of the initial carrier to issue through bill of lading and to route the property as directed, subject to lawfully established joint rates, as in effect via said joint through route; this to be at the option of the shipper. If the shipper does not elect to route his freight, then when the property is tendered to the initial carrier, such initial carrier may so route the business as to suit its own convenience, subject, however, to the benefit by the shipper of the lowest legal rate and charges for transportation between the point of origin and its destination.

Shippers located at great commercial centers like New York, Pittsburgh, Chicago, St. Louis, Kansas City, and Denver, by reason of competitive lines are usually able to avail themselves of the right to route freight, competition giving them this power. The shipper who is located at a local point, dependent upon the service of one initial line, would be discriminated against if he were not permitted to route his freight so as to avail himself of competition beyond the terminal of the initial line and thereby secure the benefit of competitive service. That no discrimination may be practiced, the law should be amended, thereby giving equal advantages to shippers located at local or competitive points.

I have had directed to my attention innumerable cases where the wishes of the shipper has been disregarded by the initial carrier, and that disregard has resulted in material loss to the shipper. If there are impracticable routes via which satisfactory service can not be rendered between point of origin and destination, but via which through rates are maintained, then the initial carrier, where it has available and practicable through routes, should cancel joint rates via these impracticable routes, which, in my judgment, do more harm than good. It is by the employment of these devious and unnatural routes that the average rate per ton a mile is lower, through increased cost of operation. Economy would result by following the lines of least resistance.

In that connection, as to the routing of freight, I have a case in mind that I might refer to, which might have resulted in a very serious loss. There was a very large firm in the United States that was dealing in Habana with the granting of certain franchises in connection with telephone service. In order to present the matter before the commission in Cuba it was necessary to have working models. The franchises represented an investment of \$8,000,000 or \$10,000,000. The shipment was delivered to the initial line at Chicago and routed by Knights Key, so that they had only a 90-mile ocean voyage to Habana. In order to make the necessary preparation to expedite the movement, all customs papers and everything of that sort were arranged at Habana. The initial line, after it had sent the shipment via Knights Key, would have had to accept a short haul, although it had through rates by a shorter junction through Knights Key. Inasmuch as the initial carrier had elected to control the routing itself, taking the long haul to New Orleans, the shipment was landed at Habana three months afterwards, taking four months to locate the shipments.

I have figures of a number of shipments routed over Canadian roads which were routed via certain junction points, to be delivered to the Canadian roads so as to give them their long haul, the contracts being made based upon the delivery at the junction points, and the ultimate delivery being at Montreal. The shipments were diverted at the initial line, over the protest of the shipper, who gave them specific instructions, were rated at Chicago by competing lines, and delayed in arrival at Montreal, with serious loss to the shipper.

Only last week my attention was called to a movement of corn from stations on the Cotton Belt Railroad in Illinois to stations in New Orleans. The rate from the Cotton Belt station to Cairo, Ill., was 8 cents a hundred pounds. The rate from Cairo to New

Orleans was 10 cents, making a through rate of 18 cents per hundred pounds on the combination of locals.

The CHAIRMAN. Was there a through rate established there?

Mr. LINCOLN. I was going to speak of that, Mr. Chairman. The Cotton Belt had a through joint tariff to New Orleans at the rate of 22 cents per hundred pounds, which applied by its own rules, giving it the long haul of Shreveport and thence over connecting lines to New Orleans. They had no joint rates by Cairo to New Orleans, so that under the law the combination of locals through Cairo would have governed, which was 8 cents and 10 cents, or 18 cents in all. But the Cotton Belt reserved to itself the right to route the freight, and disregarded the routing of the shipper, and sent the freight by its own routes, and after arriving at its destination the Cotton Belt could give no other rate than the rate of 22 cents a hundred pounds. They diverted it, reserving to themselves the right to do the business and send it by another route.

Of course, I will say, Mr. Chairman, that in my judgment they have reparation under the present law for the erroneous routing.

The CHAIRMAN. The provision on page 19 would not help them any if they did not have reparation.

Mr. LINCOLN. It would give them the right to route the freight and require them to observe it, and the shipper could avail himself of that right and get it. Now, they reserve the right to route it themselves, and make that a point of their tariff conditions.

The CHAIRMAN. The provision on page 19 only provides it when the through rate was established. In the case that you cite the through rate was not established by Cairo. In that case this would have done them no good if enacted into law. I call your attention to that solely for the purpose of getting your expression of opinion later as to how wide this latitude should be.

Mr. LINCOLN. I am human, and I have tried not to overlook those provisions, but I may have overlooked some of them.

Mr. KNOWLAND. This would be particularly important in fruit shipments?

Mr. LINCOLN. Yes, sir. There was a joint route by the Cotton Belt in connection with Mobile to New Orleans. The shipper did route the business by Cairo. The carrier disregarded the routing. That is not an unusual case. I do not know whether you wish me to take up the time of the committee by referring to many other cases that I have.

Mr. TOWNSEND. There are a great many such cases?

Mr. LINCOLN. Yes, sir.

The CHAIRMAN. We would be very glad to have a proper number of illustrations.

Mr. ESCH. I could cite to you "a modern instance" which I read in the newspapers last week. The initial carrier in Kentucky received a shipment of rock, or rock fertilizer, for delivery at a point in Pennsylvania. The shipper asked that it be routed after leaving Cincinnati via the Pennsylvania Lines. It was routed by the initial carrier by the Baltimore and Ohio at an excess of freight of \$154. The shipper brought the matter to the attention of the commission, and the commission awarded a reparation of \$154. That case was appealed to the courts in Cincinnati last week.

Mr. LINCOLN. I did not know that they were appealing those cases.

Mr. HUBBARD. That decision was rendered, was it, on the theory that the shipper has the right, as matters stand, to control the routing?

The CHAIRMAN. No. It was on the theory that the shipper had the right to the lowest rate.

Mr. ESCH. And he had designated it. He had evidently looked up the tariff.

Mr. TOWNSEND. As I understand that proposition, it is that if the initial shipper indicates his shipment to the junction point at which the initial carrier had traffic relations with some other road, he has the right to indicate that, though he has not the right to bill clear through unless the carrier has a traffic arrangement clear through.

Mr. HUBBARD. How does the initial line control?

Mr. LINCOLN. It is being published as part of the tariff.

Mr. HUBBARD. It is clear that the law contemplates that which is something different from the price to be paid for the service rendered?

Mr. LINCOLN. They are doing it.

The CHAIRMAN. There is a decision of the court on it, and the railroads, I believe, are taking that position.

Mr. HUBBARD. Is that right affirmed by the decision?

The CHAIRMAN. Yes.

Mr. ADAMSON. I suppose they adopted that method of making a through route.

Mr. LINCOLN. If the initial carrier can make the routing, they can build up the most enormous pooling that was ever built up.

Mr. ADAMSON. If they have made a joint rate perhaps the commission can compel them to.

Mr. TOWNSEND. The law provides for that, if there is not a satisfactory route in existence.

Mr. LINCOLN. The commission has had numerous cases before them with reference to this matter, and ruling in the Cotton Belt case, just referred to here, was an administrative ruling, showing that it was not common. The bill of lading showed a rate of \$1.25 per ton, routing in care of a connecting line. Through one junction the two carriers had a joint through rate of \$1.75 per ton, through another junction equally direct, but carrying no joint rate. The combination through rate was \$1.55 per ton. It was held that while an initial line is not chargeable always with a knowledge of the routes of its connections, yet having accepted a shipment and bill of lading on which the shipper had noted a definite route, it was its duty to note that road, or, failing to do it, was liable for transportation charges for routing the shipment through one junction when through another junction equally direct the locals made a through charge noted on the bill of lading.

Mr. FAULKNER. They have given reparation?

Mr. LINCOLN. They would, no doubt, in this case that I have referred to. The decision was made only last week.

Mr. HUBBARD. Was it given because of the disregarding of the routing of the shipper, or because they did not give the shipper the advantage of the lower rate?

Mr. LINCOLN. They disregarded the routing.

Mr. FAULKNER. Wasn't it on the ground that they had taken it to that point, and therefore they were responsible for giving the lower rate?

Mr. LINCOLN. They did not take it to the point where the lower rate prevailed, but diverted it by another road.

Mr. FAULKNER. Yes; therefore I say the commission decided they were liable for the lower rate.

The CHAIRMAN. As I remember that case—

Mr. LINCOLN. That was the California citrus case.

The CHAIRMAN. There was a case referred to the other day of a shipment from the East out to the far Northwest, where they took the freight down farther south, instead of taking it over the north line, and on the route over which the freight was taken there was a higher combination of rates than there was over the other route; and the court held that it was the duty of the railroad company to send that freight at the lowest rate.

Mr. LINCOLN. Yes. But I say they are now putting the condition in the tariff that the initial line reserves the right to route the freight.

Mr. HUBBARD. If the shipper was entitled to the lowest rate that would hold, whether the one he selected was the one or not. It does not seem to me to involve the right to route the freight all the way through.

The CHAIRMAN. So far as that question is concerned, in some of the fruit cases the court has held that the railroad company has the right to divert the freight and send it whichever way they choose to.

Mr. TOWNSEND. I have in mind, I think, the case you speak of—where there was a through rate and at another junction point there was another connection, and that route could only be taken by going over the route that had that published tariff. The carrier took it another way that had a higher charge, and in that case the commission ruled that the roads must refund the difference.

Mr. LINCOLN. I might read into the record, if desired, ruling 183 from the Interstate Commerce Commission's conference ruling bulletin No. 104, as to the reservation of the right to route shipments:

The following rule in a published tariff was approved as lawfully subject to complaint by shippers: The A & B Railroad reserves the right to route through to destination property delivered to it for transportation at the through rate shown in this tariff, and every carrier participating in such transportation shall have the right in case of necessity to forward such property by railroad or boat between point of shipment to destination; but if the freight is given to a rail or water route the liability of the carrier shall be the same as if the entire carriage were by rail.

We claim that the shipper should have the right to select which one of a number of different routes he chooses.

Mr. HUBBARD. What right would that leave to the railroad company to divert the route in case of necessity?

Mr. LINCOLN. That is the law now.

Mr. HUBBARD. But that would not be the law under the proposition you propose.

The CHAIRMAN. The proposition is to give the shipper the right to route the freight, subject to the reasonable regulations of the Interstate Commerce Commission.

Mr. ESCH. Subject to the reasonable exceptions and regulations of the Interstate Commerce Commission.

Mr. LINCOLN. I want to make a slight change in the wording there, Mr. Chairman, of that routing rule on page 19, line 13. It reads: "For which a through rate shall have been fixed as in this act provided." Now, it might mean that a through rate could be fixed by the commission, or fixed upon complaint. But in order to thoroughly clear up the point in your understanding, I would suggest in the fourteenth line, after the word "been," that you insert the following: "published and filed or fixed," with a comma after "fixed," making it read: "between which and the point of such delivery for shipment two or more through routes shall then be duly established and for which a through rate shall have been published and filed or fixed as in this act provided," etc.

The CHAIRMAN. What do you mean by "filed or fixed"—"Published and filed or fixed?"

Mr. LINCOLN. Certain rates may be fixed by the Commission on complaint.

Mr. HUBBARD. "Published and filed" by the railroads, or "fixed?"

Mr. LINCOLN. Yes. But we want to cover particularly the rates which are published and filed. The question was raised, and I make this suggestion because it clears up the point that was brought to my mind by referring specifically to the rates as published and filed.

The CHAIRMAN. Where the commission changes the rate, is not the order that the company shall file a new rate?

Mr. LINCOLN. Yes. It had not been fixed by the other routes except as the railroads fix them themselves. We want the right to use any of these routes upon which the routes have been published or filed. Possibly the word "fixed" would cover all.

The CHAIRMAN. What I want to get at is, when you say "published and filed or fixed," what do you mean by "fixed?"

Mr. LINCOLN. The rates fixed by the commission upon complaint as to the rate.

The CHAIRMAN. Is not the idea that the commission, on complaint, shall publish a new rate?

Mr. LINCOLN. Yes; a published rate or a subsequent rate as fixed by the commission where the commission has authority to fix joint rates, where there are no available routes.

The CHAIRMAN. I was under the impression—I may be wrong about that—that there were no rates except those published and filed.

Mr. HUBBARD. And you hold that the rate does not take effect until the publication and filing?

The CHAIRMAN. Yes.

Mr. LINCOLN. I rather like the words "published and filed" rather than "fixed."

Mr. TOWNSEND. Is it not possible to have the rate fixed by the commission? For instance, suppose a case was heard to-day before the commission and the commission had come to a determination and fixed the rate. Now that takes effect at once, or do you have to wait until that is filed?

Mr. LINCOLN. They usually give a specified set time. Ordinarily it is thirty days; never less than thirty days, so as to give opportunity to publish and file.

Mr. TOWNSEND. If you say "publish and file," I see no reason why that should not be found to be satisfactory.

Mr. LINCOLN. While the commission does not fix the rates, it has authority under the preceding paragraph to establish joint routes and rates, and the railroads are fixing the rates when they establish a joint route. Now they are fixing a new rate. We want to cover that in this paragraph.

Mr. TOWNSEND. Now to get this question directly before you, a rate fixed by the commission would not be operative until it has been filed?

Mr. LINCOLN. No; it would not be operative until it had been filed. It has to be published and filed before it becomes legal. If the railroad does not publish and file, it is in contempt, and I believe it is so held for failing to comply with the legal obligation to publish the tariff.

The CHAIRMAN. If it is not filed, the commission can file a petition in court to have the road adjudged in contempt.

Mr. FAULKNER. There is another prohibition that there shall not be any transportation of these goods until the rate is filed.

Mr. LINCOLN. If we were interpreting, Mr. Chairman, the word "fixed" might be construed as only applying in connection with the preceding paragraph where the commission fixes a joint through rate, and we wanted the right to use the published and filed rate, or fixed rate—fixed by the commission. However, it would be published and filed; and I really believe the word "fixed" is rather superfluous.

The CHAIRMAN. I think we all understand it.

Mr. LINCOLN. I believe it is a useful term. We want to cover published and filed rates. Is there anything further upon that subject?

The CHAIRMAN. Is there any reason, in your opinion, why any shipper should not have the right, if he so chooses, of designating the route over which his freight should go?

Mr. LINCOLN. I know of no reason.

The CHAIRMAN. Regardless of whether there is a through route or a through rate established?

Mr. LINCOLN. I think he should be able to use any rate he wants to, when he designates that rate, but he would have to pay the legal tariff rate via that route that he uses, whether it is a through rate or not. He can usually use the other, because he consigns it locally and gives instructions to reship. Where there is a combination of local rates he can always use that, because there being no through rate published, he can consign his business locally and give reshipping instructions. If there is a through rate he can not do that, even if the through rate is higher.

The CHAIRMAN. I have had a good many letters sent to me in reference to the proposition, I suppose sent to me because I happened to be the chairman of the committee, that where no through route is established, hence no through rate is established, and where shippers insist that they lose, not merely in the rate, perhaps, but in the time consumed in delivery by some particular railroad, where there are several, because they are not able to route their freight where there is no through rate established, and where the rate is the sum of the locals.

Mr. LINCOLN. They should have the right to route their freight where there is no through rate.

The CHAIRMAN. Where there is no through joint route, you mean?

Mr. LINCOLN. No through route, I mean. They should have the right to route it, absolutely.

The CHAIRMAN. Is there any difference in principle in giving such a shipper the right to route his freight—

Mr. LINCOLN. Not at all.

The CHAIRMAN (continuing). Where a through joint rate is established?

Mr. LINCOLN. I do not think there is any difference in principle. He ought to be able to use the local rates, the two local rates. He should have the right to route his business so as to use the two local rates.

The CHAIRMAN. Under this provision would there be any danger or liability of shippers who furnish different classes of materials to the railroads compelling a railroad to purchase their materials under penalty of refusing to route freight by that road?

Mr. LINCOLN. Mr. Chairman, I would say that there is not. That condition exists to-day more than it would otherwise for this reason: I want to say that the present regulations of the railroads are discriminating against the man located in the interior. Take a shipper who is located at St. Louis. If the shipper does not want to use one route, he can say, "Mr. Jones, I will forward my business over Mr. Smith's line." The shipper located at a junction point to-day does not have to pay any attention to the initial line's assertion of the right to route freight, because he can disregard it and go to some competing line and give his business to that line. That is the situation at a junction point.

At the large commercial centers we have the benefit of competition. Where all the agents are soliciting business the shippers, with very rare exceptions, control the routing of the business. There is no effort made on the part of the carrier to control the routing of the business. But in the case of the man located at a local point, his business is put up for sale. That is all there is to it. He has no control over the business.

We are here representing the small shipper rather than the large shipper on that point. The large shipper can take care of itself. We want the industry that is located locally on the line to get the benefit of the service as well as the big man, and we want him to be able to route his business. The man at St. Louis will give his business to the road that allows him to route it, and he will route it the way he wants it routed.

The CHAIRMAN. You think the large shipper can take care of it now?

Mr. LINCOLN. I think so.

Mr. TOWNSEND. That is, the junction man?

Mr. LINCOLN. The junction man—not the local man. He only has the one road that he can use.

The CHAIRMAN. The traffic men, I may say, of the four largest manufacturing concerns in the city of Chicago, which, of course, is more or less of a junction point—

Mr. LINCOLN. Very much so.

The CHAIRMAN (continuing). Told me not long ago that it was impossible for them to control the routing of their freight.

Mr. LINCOLN. That is rather a surprise to me.

The CHAIRMAN. It rather surprised me.

Mr. LINCOLN. Mr. Bell is one of the large shippers. Do you not control the routing of your business out of Chicago?

Mr. BELL. Absolutely.

Mr. LINCOLN. Mr. ——, do you not control yours out of Pittsburgh?

Mr. ——. Absolutely.

Mr. LINCOLN. These two gentlemen tell me that they control theirs absolutely. I know that we control ours out of St. Louis. Here is a Peoria man who says that he controls his. But the man located at the local point can not control it.

The CHAIRMAN. I do not care to put in the record who these gentlemen were, but I would be glad to tell you.

Mr. LINCOLN. I am glad to get the information; but my experience is that the large shipper can control it if he is located at a junction point.

The CHAIRMAN. I wondered whether they were telling me that because they were so much exercised over the proposition or because they were strenuous members of your league.

Mr. LINCOLN. I am very much exercised over the proposition, as representing our local people who are located out on the line, and who can not control it. We have some big plants located at local points which do not control their business. I was talking with one of the largest lumber manufacturers in the State, and he said that he fixes the bill of lading and puts the routing on the bill of lading, and they scratch it out and do not pay any attention to it, and send it the way they want to.

Mr. HUBBARD. If there is loss of a shipment on a connecting line under some circumstances, some carrier is liable?

Mr. LINCOLN. Oh, yes.

Mr. HUBBARD. In that case, against whom is the remedy of the shipper in the first place?

Mr. LINCOLN. If it is a loss by reason of overcharge, the remedy is against the initial line.

Mr. HUBBARD. I mean if it is due to some accident, some injury to the cargo. Under such circumstances some carrier is liable to the shipper. Against whom has the shipper his remedy in the first place?

Mr. LINCOLN. Under section 20 of the interstate-commerce act, against the initial line.

Mr. HUBBARD. Against the initial line?

Mr. LINCOLN. Yes, sir; for loss or damage.

Mr. HUBBARD. That being so, ought not the initial line to have the right of selecting the lines to which it is to look for reimbursement?

Mr. LINCOLN. No, sir. It puts itself out as a common carrier having connections between all those points.

Mr. HUBBARD. That is true as to all those who are parties to a tariff, but I understood the chairman's inquiry to be——

Mr. LINCOLN. That is all I am asking.

Mr. HUBBARD. I understood the chairman to inquire why that ought not to be so between any lines, whether covered by a joint tariff or not. I ask you whether that would be just.

Mr. LINCOLN. I think it absolutely would be just. If it is moving on the combination, it has to go all the way on the combination rate.

Mr. HUBBARD. There was no combination rate, as I understand, in the question put by the chairman.

Mr. LINCOLN. Oh, yes.

The CHAIRMAN. No joint rate, but it is the sum of the locals rate.

Mr. HUBBARD. But if the connecting line is not one selected by the initial carrier, to which it might be willing to look for the loss which it had to pay in the first place, but is selected by the shipper, under those circumstances ought the initial line be liable for damage done by that connecting line which it might not be willing to credit?

Mr. LINCOLN. I do not know that they are liable in such a case.

Mr. HUBBARD. I do not know that they are, but I understood the chairman to suggest that they ought to be, or the inquiry to be whether they ought not to be.

Mr. LINCOLN. They are responsible to the same extent to which they are responsible under the present law. That is all. We are not trying to add any to their responsibility or liability as to the tariff rate, or increasing their liability except as provided for under their tariffs. If they have no joint tariff the business has to go without the joint tariff.

Mr. HUBBARD. It is all right if they have selected some line, dealt with it and given it credit, and if they say "We are willing to pay the loss in the first place and look to you for it;" but is it right to extend it to include accidents or damage happening on some line that that they have not selected or dealt with, and have not held out as worthy of credit? Perhaps I do not make myself clear to you.

Mr. LINCOLN. I do not quite understand your question. I will say that.

Mr. HUBBARD. My inquiry is with relation to a suggestion made by the chairman, and not to any proposition of your own.

Mr. LINCOLN. I understand. My judgment is that if the initial line accepts the shipment on the combination locals as a through shipment, it should be liable. If it accepts the shipment for movement to a local point for reshipment, it is not liable.

Mr. HUBBARD. Might there not be a difference between the acceptance of a shipment with the right to route it as it pleased, and the acceptance of a shipment to be routed as the shipper pleased?

Mr. LINCOLN. I do not believe that occasion would arise at all. I do not think that generally arises. I think it is rather an improbable situation, because it is only in connection with the joint proposition, the joint rate, that these questions become involved, where there is more than one route.

Mr. HUBBARD. I understand that to be your position.

Mr. LINCOLN. Yes, sir.

Mr. HUBBARD. The position suggested by some one else was the one that was in my mind.

Mr. LINCOLN. The next question I wish to bring up is on page 12, section 7.

Mr. ESCH. Mr. Lincoln, in the shipping of perishable freight, would you deprive the carrier of the right to route? I have in mind cases brought by the Southern California Fruit Growers' Association, the shippers of oranges to the East. Do you think the carrier should

have the right to route perishable freight, and if so, should this bill make exceptions in that particular?

Mr. LINCOLN. I rather imagined the bill as drawn—at least, I so construed it—was to give the commission the power to make those exceptions upon petition. We want, as a matter of law, the right to route freight, and when we say that we mean the right to route any kind of freight over any route as to which they publish legal joint through rates. They hold themselves out as common carriers. They hold themselves out to engage in that traffic via any through route. I recognize as a shipper, I recognize from my experience as a railroad man, and have had the experience brought home to me very closely, that as to perishable freight where, owing to the peculiar character of that freight, certain provisions have to be made for the handling of it, there should be provision for certain exceptions to the rule; and I was rather impressed when I read the proposed amendment to the law by the fact that it had gone further than we had suggested. We had overlooked that feature of it. This proposed amendment gives the commission power to make certain exceptions; and I had it in mind that that was probably what was intended.

I might state, Mr. Esch, that I had quite an experience in handling the watermelon business on the Iron Mountain road. We had to handle, probably, 1,500 to 2,000 carloads of watermelons during a very limited period. We had to anticipate the ripening of those melons for shipment. As the period of the big movement occurred during a space of about twelve to fifteen days, necessarily we had to accumulate the cars at the points of shipment in advance of the movement, and we would ask our connections to supply a pro rata proportion of that movement. The shipper had the right to route the freight if he called for a car to be loaded by a certain line, but the custom there was to load the watermelons in the car for shipment, and then the buyer would come along and say, "I will buy this car." The balance might have been loaded in a New York Central car, and the man who bought the melons might want them to go to Denver. We took exceptions in that case, as melons are cumulative and perishable freight, and equipments would have to be supplied in routing that particular business. If they gave an order in advance for a car, they had a right to route it. It appeared to me that in a case of that kind there should be some exception to the rule, because the business might be routed over a route where there was no provision for taking care of it.

Mr. HUBBARD. It might also be routed over a route that did not supply its proportion of the cars called for, might it not?

Mr. LINCOLN. Yes; it might be.

Mr. HUBBARD. You might make a call for a certain proportion of cars—

Mr. LINCOLN. As to refrigerator equipment; yes.

Mr. HUBBARD. What ought to be the rights of the shipper in cases of that sort?

Mr. LINCOLN. Where the road does not supply the cars?

Mr. HUBBARD. Where he routes the watermelons through by a certain line, and you have called on that line to provide its proportion of cars necessary to handle those watermelons, but they do not furnish them.

Mr. LINCOLN. They did in that case.

Mr. HUBBARD. Ought not the shipper under those circumstances to have the right to send those watermelons over a line which does furnish the cars?

Mr. LINCOLN. I said as to perishable freight, that we furnished the cars in advance. As to the other freight, we make a requisition for the car or furnish our own.

Mr. HUBBARD. Oh, I beg your pardon.

Mr. LINCOLN. As to perishable freight, we know where the cars are located in advance.

Mr. ESCH. I would like to ask you one other question, Mr. Lincoln. Suppose that the shipper does not indicate the route. Do you think we ought to provide in this section that in such an event the carrier must route it over the route with the lowest rate?

Mr. LINCOLN. That is provided for there; or I think it should be provided.

Mr. TOWNSEND. I do not think that is provided for.

Mr. ESCH. I did not gather it from reading it.

Mr. TOWNSEND. That was left out for a reason. I was wondering what your arguments were in favor of that provision. What do you suggest?

The CHAIRMAN. I do not quite understand the theory of cutting out perishable freight from the right to route. That would cut out the right of the California fruit growers to route their freight.

Mr. HUBBARD. It would seem that the question of safety and expedition, while as to other things might not be as important as it is to perishable freight, might be as important as to get it through cheaply.

Mr. TOWNSEND. There is another aspect that I might suggest. I think I am correct about it. It is sometimes true, especially in the busy season, that there is a congestion over one line. Under those circumstances, if every fruit grower suggested the same line, and insisted that his freight should go over the same line, it would result in congestion and loss. That not only applies to fruit, as I understand it, but to other conditions, and where it is apparent to the commission that the request of the shipper in that particular instance is not a just and proper one, it should have the right to make an exception for that particular shipment.

Mr. LINCOLN. I think the exception should be permitted by the commission.

Mr. TOWNSEND. Now, if you will answer the question Mr. Esch asked you, Mr. Lincoln, I would like to know why in your opinion the carrier, not having designated to it, by the shipper, the route over which the shipment should go, should be held responsible for shipping it over the cheapest route?

Mr. LINCOLN. I hold that because it has the tariff on file at the station and has knowledge of the lowest rate, it should give the shipper the benefit of the lowest rate.

Mr. HUBBARD. But suppose some other line is the quickest, or by reason of geographical location, the safest and surest. It may be more important to get the cargo through quickly than to get it through cheaply.

Mr. LINCOLN. The shipper should elect whether he wants to pay the higher rate to get it through quickly, and not the carrier.

Mr. HUBBARD. The shipper does not elect anything in the case Mr. Townsend put.

Mr. LINCOLN. If he does not elect anything, it is the duty of the carrier to send by the lowest-rate route.

Mr. HUBBARD. It is the object of the carrier, is it not, to give him the best service; and that may consist in expedition rather than in low price.

Mr. LINCOLN. If the shipper wants the best service, as compared with the cheapest service, he should say so. Let him elect which he wants to use. When he has the right to elect at the outset, and does not exercise it, is it not reasonable that he should have the benefit of the lowest rate?

Mr. HUBBARD. In the case Mr. Townsend puts he does not elect at all. He leaves everything to the carrier.

Mr. LINCOLN. Then he should have the benefit of the lowest rate.

Mr. HUBBARD. It may be more valuable to him to have the benefit of the quickest route.

Mr. LINCOLN. It may be if the company has two rates, one by one route and one by another, that they should notify the shipper of the two rates, and let him elect which he wants to use, just as to-day they have the all rail versus the water and rail.

Mr. HUBBARD. If he has that right at the beginning and chooses not to elect, but lets the carrier decide for him, why should not the carrier come back to him and ask what he wants, when he does not in the first place elect?

Mr. LINCOLN. He leaves it to the carrier as to the routing; but he wants the cheapest route.

Mr. HUBBARD. Perhaps he wants the quickest route.

Mr. LINCOLN. Except as to the differentials the rates are the same on all the roads. If he wants the cheaper as against the higher price, it is the duty of the shipper to state which he wants—I mean on the same kind of business.

Mr. TOWNSEND. If we go so far as to give the shipper the right to route his freight by any one of several routes with which the initial carrier has joint traffic relations, are we not going about as far as we ought to go? If the shipper neglects, has not interest enough in it under that provision to designate, then ought not the carrier to be allowed to exercise its own discretion as to which one of those joint lines it will forward the freight over?

Mr. LINCOLN. I think it should be allowed discretion as to which one of the joint lines it wants to forward the freight over, but I do not believe it should have a right to select the more expensive route.

Mr. TOWNSEND. Then the shipper ought to have designated in advance if he wanted it over some particular route, if we give him that power.

Mr. HUBBARD. How many times do you want him to have a chance to determine?

Mr. LINCOLN. I would say that the only chance we want is to elect whether he wants to go by rail or lake and rail. All the railroad rates are the same. We have no trouble about the all rail. It is only the question of the rate by one route and another. They sometimes send it by erroneous routes, where the rate is higher than by the all-rail route. I think we ought to be governed by the all-rail route, and

not make the shipper suffer from their erroneous routing. We have had no trouble on that score, I would say.

Mr. ESCUE. Is that the reason why that was omitted?

Mr. TOWNSEND. That was the reason, and for the very reason Mr. Lincoln has suggested. In all the inquiry we could make we found no complaint on that proposition. The only complaint that was made, and that was made quite largely, was that where the initial carrier had joint traffic relations with several carriers the shipper ought to have the right, subject to reasonable rules laid down by the commission covering excepted cases, to route his freight. If he did not appreciate that favor enough to designate the route, then it seems to us it ought to be left to the carrier, as it is now, to say which route it should go over.

Mr. LINCOLN. Of course, the way it is now we are protected in favor of the lowest legal rate.

Mr. TOWNSEND. We are not changing that, you understand.

Mr. LINCOLN. If they misroute a shipment so that the shipper has to pay higher than a legal rate, he can get reparation now.

Mr. TOWNSEND. There is no proposition in this bill, or in any bill, to change the present rule.

Mr. LINCOLN. We are satisfied with the present rule as to unrouted business.

Mr. ESCH. Would giving the shipper the right to route freight result in competition of service, which in the end would be beneficial to the people generally?

Mr. LINCOLN. That is what it does.

Mr. ESCH. And is that practically the main reason for the amendment?

Mr. LINCOLN. That is one of the main reasons—to get the benefit of the best service, and competition.

Mr. TOWNSEND. It would also have a tendency, would it not, to bring into joint traffic relations these routes which now ship on combinations?

Mr. LINCOLN. I think that is ultimately coming anyway. I think they have to come to that to avoid the difficulties they are having in regard to the misrouting of freight, which we can not consistently stand against.

The CHAIRMAN. Do you think there is any danger under the right to route of freight being delayed sometimes upon a road that is blocked with traffic?

Mr. LINCOLN. Is there any liability of delaying it?

The CHAIRMAN. Freight being delayed. Suppose a shipper routes freight over some distant road which happens to be blocked with traffic—which was the case with a great many roads a few years ago, and is likely to be again. The carrier has no opportunity then of sending the freight over any other road?

Mr. LINCOLN. That is one of the reasons why we want the right to route the freight, because we are going to avoid those blockades. My experience of course was all in St. Louis, personally. In regard to moving grain southeast two years ago when the corn was in a heated condition, the quickest route that we had to the southeast was the Nashville, Chattanooga and St. Louis Railroad. This central railroad had its own lines down in that territory that was congested. The Southern Railway was congested, and the Louisville and Nash-

ville was congested, and the Nashville, Chattanooga and St. Louis were naturally giving us the best service and reporting to us every day where those cars were. It was a critical season, when the corn was heating, and there was a great deal of loss occurring. Now, if the initial line had had the right to choose the route we could not have used the Nashville, Chattanooga and St. Louis Railroad; and we could not have had the benefit of that service if the initial line had had the right to control it.

It is only in the last eighteen months or two years that these clauses with regard to reserving this right to route freight have been entering into the tariffs. It is a very recent thing. Nearly all of the tariffs that are coming out now have that clause in them.

The CHAIRMAN. But these freight blockades occur when the railroads do not exercise the right, as a general proposition, of routing freight.

Mr. LINCOLN. Yes; I am sorry to say that some are blocked right now. The freight is moving very slowly in the West.

The CHAIRMAN. Suppose a man ships freight, and he routes it, and it goes on a road where it is blocked, and where the railroad, by delivering it to another carrier, might get the freight through on time.

Mr. LINCOLN. My experience is just to the contrary. They take it whether it is blocked or not, and keep it in their own service, whereas the man who could route it will avoid blockades. The Nashville Enameling Company were avoiding blockades in Chicago by running around Chicago during the recent blockades. They could not get it through there. They were routing their business by through routes to avoid that very blockade.

The CHAIRMAN. I apprehend that the shippers do not always know where the blockades are.

Mr. LINCOLN. Oh, they keep pretty well informed—the large ones do.

The CHAIRMAN. They apparently do not know what the tariffs are, so that I apprehend that they do not always know where the blockades are.

Mr. LINCOLN. I admit, Mr. Chairman, that they do not always know. They find it out after it has occurred.

The CHAIRMAN. What I asked was whether there should be no leeway provided by law in cases of that kind. Would you want to hold the railroad company responsible for damage because of delay?

Mr. LINCOLN. I think at present they are authorized, in case of strikes or in case of acts of providence, to make a diversion and get the property through to its destination. The bill of lading carries this provision:

No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch, unless by specific agreement indorsed hereon. Every carrier shall have the right in case of physical necessity to forward said property by any railroad or route between the point of shipment and the point of destination; but if such diversion shall be from a rail to a water route the liability of the carrier shall be the same as though the entire carriage were by rail.

That is in the bill of lading to-day.

The CHAIRMAN. You wish to eliminate that from the bill of lading by law?

Mr. LINCOLN. I do not wish to eliminate that and place the liability upon the carrier for something that it can not safeguard itself against.

Mr. HUBBARD. If this law were enacted would the provision in the bill of lading that you have just read be legal and binding?

Mr. LINCOLN. I think under the common law it would. I think the railroads are required to exercise due diligence over the property in its possession when, by reason of strikes, or some acts of providence, it would deteriorate in value or be destroyed if they did not exercise diligence.

Mr. TOWNSEND. The proposed bill provides: "Subject to such reasonable exceptions and regulations as the Interstate Commerce Commission shall from time to time prescribe." It could prescribe such a regulation under this law, as well as it could under the other. If it could not, it ought to be fixed so that it could; but that was the intention, that that was broad enough to cover the movement of through-route cars.

Mr. LINCOLN. The Interstate Commerce Commission on March 4, 1907, conference ruling 213, conference bulletin No. 4, had occasion to deal with this question at that time (reading):

Whenever, by reason of blockade upon the line of a carrier resulting from storm, washout, wreck, or similar casualty, it becomes necessary for it to divert to the line of another carrier passengers or freight that are in transit, the carrier so diverting its business should pay the carrier or carriers upon whose train such passengers or freight are carried, regular tariff rates or fares from and to the points between which it or they transport such diverted traffic, except that if the carrier accepting such diverted traffic is participant in a joint tariff in which the diverting line is also a participant, and under which the diverted traffic is being moved, settlement may be made on basis of the division of the through joint rate or fare.

They were dealing with the question at that time.

The CHAIRMAN. That deals with exceptions that I did not refer to. It does not cover the case of a freight blockade owing to the amount of traffic. That covers a casualty.

Mr. LINCOLN. That covers a casualty.

Mr. ESCH. Under the existing practice where the carriers route the freight, is there sometimes an understanding between the carriers of this character: A gets a certain tonnage from B, and B agrees to give A an equivalent tonnage therefor, resulting in what might be practically termed a freight route.

Mr. LINCOLN. I would state that it is hardly that way, Mr. Esch, but the practical effect of it is the same. I do not believe the situation has changed any since I was in the railroad business. The carrier at every junction point at which there is an interchange of traffic with connections keeps a very close watch upon the tonnage that is being delivered to it. It will not give tonnage to a line that is not reciprocating. They usually try to balance it up, as the east and west bound movement will permit, and in that way the shippers have been deprived of the control over their own business in that the carriers may trade with each other as to the interchange of tonnage. We object to that.

Mr. ESCH. Take a case where the larger roads have bought the stock of many of the weaker roads, or smaller roads. Is it the tendency, under the present practice of giving the carrier the right to route the freight, for the larger company to route over the company in which it has a holding of stock?

Mr. LINCOLN. That is the natural tendency.

Mr. ESCH. Would this amendment tend to obviate that practice?

Mr. LINCOLN. It would, in my judgment, obviate the practice of routing the business over those lines, except where the shipper would elect to use some other one, and he might use other lines in which they are interested; but he is interested in the service over their railroads. I might give an illustration that is very much to the point, and one which is well known. From Denver to Chicago there are, via Omaha, the Chicago and Northwestern; Chicago, Milwaukee and St. Paul; Chicago, Rock Island and Pacific; Chicago, Burlington and Quincy; and Chicago Great Western; and via Kansas City there are the Atchison, Topeka and Santa Fe; the Chicago and Alton; the Wabash; and the Missouri Pacific. Those routes are available to all lines. The representative of the eastern lines at Denver is in a position to give information to the shippers in the same way he is as to the service over his road, and can tell him where his freight is. The shipper has to pay the tariff rate and the shipper ought to be able to route his business by any line that he wants to, and by that line that is going to give him information as to his freight, and not allow the initial line to take it out of his hands entirely so that he does not know which road it is on or where it goes in transit. I say that is where you get the benefit of the competition. They all have representatives soliciting the business, and we get the benefit of the competition. And under the present law, as there is no rebating or special privileges, all we have to do is to pay the tariff rate to get the best service.

Mr. ESCH. Does this favoritism under the existing practice extend to the interchange of cars as well as of tonnage?

Mr. LINCOLN. I do not find that to be the case right now. Where there is a heavy blockade there is a disposition to keep the home cars on their own lines.

Mr. TOWNSEND. This argument is sometimes advanced, Mr. Lincoln, against your proposition, and I would like to have you think about it. One of the arguments presented has been that some of the connecting lines are not as well equipped with cars and do not have the facilities which other roads have, and therefore the carrier ought to be permitted to take advantage of the best, instead of being compelled to carry over the line with insufficient equipment.

Mr. LINCOLN. I think the question of cars is largely in the hands of the carriers themselves; but assuming that the connecting carrier does not perform its part of the duty in furnishing equipment or service to that originating line, then it should be eliminated from the tariff. They should not hold it out as a common carrier and a connection of that line, and then say that they can not use it because its credit is not good. If its credit is not good strike it off of the credit list. If that were done you would get better service on the part of those lines.

The CHAIRMAN. The exchange of "empties" is a very necessary function in the performance of transportation. What effect would this have on that?

Mr. LINCOLN. I do not think it would have any effect on it. The matter of the empties is largely with the operating department, and

they can control that. It would have no more effect upon it than it has to-day.

The CHAIRMAN. The operating department of one road is not very anxious to furnish empty cars to another road, unless it gets loaded cars back, is it?

Mr. LINCOLN. It is not very anxious to do it.

The CHAIRMAN. Is there any way of compelling it to do it?

Mr. LINCOLN. Not under the present law, I believe.

The CHAIRMAN. And there is no proposition to change it?

Mr. LINCOLN. I have no proposition as to that.

The CHAIRMAN. Is not that a very serious question, with reference to coal transportation?

Mr. LINCOLN. It is, in regard to furnishing cars, a very serious question at times.

Mr. HUBBARD. But where it retains the control of its cars, I understand you to say it ought to have the cars of the initial line; and the shipper says that those cars shall go over certain lines, which could not, or will not, return an equivalent number of cars to that initial line.

Mr. LINCOLN. Then do not let them hold themselves out as common carriers under the joint through traffic.

The CHAIRMAN. But they do.

Mr. LINCOLN. They should not do it if they will not perform their part of the duty.

The CHAIRMAN. Is not the shipper the one who will suffer?

Mr. LINCOLN. No, sir.

The CHAIRMAN. If the shipper can not get empty cars to load, he will suffer.

Mr. LINCOLN. The case you refer to where the shipper does suffer is by the line holding the equipment. The initial line has the equipment, and can regulate its supply, and move it in connection with the lines that are going to furnish their part of the equipment.

The CHAIRMAN. The lumber men told us the other day that they were not only willing to take any kind of a car, but they congratulated themselves on getting any kind of a car when they wanted to ship a load of lumber. If that be the case, and I have no doubt they were telling us what they believed to be the fact, is it not very essential to the shipper that the road he ships over shall be able to get empty cars to take the place of the loaded cars?

Mr. LINCOLN. Well, in a general way that would be the result.

The CHAIRMAN. It must be.

Mr. LINCOLN. The lumber man is depending upon the connecting lines for his supply. I presume you have reference to the cars the originating line ought to furnish.

Mr. HUBBARD. Ought it not to be permitted to choose among the connecting lines that one that can return empty cars to it for the benefit of the shippers?

Mr. LINCOLN. Ought it to be able to choose?

Mr. HUBBARD. Ought it not to be able to select that line?

Mr. LINCOLN. The initial carrier?

Mr. HUBBARD. Yes; the initial carrier. Ought it not to be able to send cars over that connecting line which can return to it cars for the benefit of the same shipper, maybe the next day or the next week?

Mr. LINCOLN. I can not go to that extent. I believe in making every joint traffic arrangement each party should stand its share of the burden. If the connection is not going to live up to its part of the joint tariff or establish through routes, then it is a good deal like a man who does not pay his bills. If he is not worthy of credit, strike him off of the joint list.

The CHAIRMAN. You would not expect the Baltimore and Ohio Railroad Company to furnish empty coal cars to one of the little lines that may connect with either it or the Pennsylvania if all the loaded cars were consigned by way of the Pennsylvania, I take it?

Mr. LINCOLN. If it held itself out as a joint carrier it ought to send the business that way.

The CHAIRMAN. What object would the Baltimore and Ohio have in furnishing empty cars in order that the Pennsylvania Railroad Company might carry the loaded cars?

Mr. LINCOLN. They would not have any object in that. They should not do it.

Mr. HUBBARD. You think they ought to be required to do it?

Mr. LINCOLN. I think the initial line should be required to furnish cars. I also say that when a joint line is established it is the duty of each part of that joint line to furnish its share of the equipment.

Mr. TOWNSEND. They can cancel that part of the agreement if they do not do it?

Mr. LINCOLN.. Yes: you are not required to do business with anyone who does not live up to his obligations.

The CHAIRMAN. Take a case of this kind: Here is a small line of railroad, a coal line in the coal country. It would be manifestly impossible for that road to furnish a sufficient equipment to ship coal all over the United States this side of the Missouri River. It must rely on the other main lines of road for its cars: yet it may be able to get cars from only one road, because all of the loaded cars may be sent by the shipper over one road; and that road may not be able to furnish a sufficient number of cars.

Mr. LINCOLN. I do not know why the shipper should assume the burden of the carrier. I quite agree with you that those cases exist, and they are hard to deal with.

The CHAIRMAN. We are told by some of the shippers down here that they decidedly do exist.

Mr. LINCOLN. I say I agree with you. They do exist, and they are very hard to deal with.

The CHAIRMAN. The shipper is the one upon whom is cast the burden in that case. There is no earthly object for a man to mine coal unless he can ship it, and he can not ship it unless he can get cars.

Mr. LINCOLN. I would say, so far as the shipper is concerned, that he is not going to undertake to use his equipment by sending it over some other line than the one which furnishes it to him. You cite rather an extreme case.

The CHAIRMAN. Of how much value is it to the shippers to be able to change the destination of the freight while it is in transit?

Mr. LINCOLN. It has been variously estimated. I can not answer that, as I have not given it very much investigation. It depends

somewhat on the commodity. That is one of the questions that the shippers themselves disagree upon, and I believe it is now being considered by the commission, as to what is the proper charge under certain conditions and upon certain traffic. As to what would be a proper charge in making a consignment in transit, I really do not know.

The CHAIRMAN. I did not speak of the question of charge at all.

Mr. LINCOLN. The value of the privilege of reconsigning you speak of?

The CHAIRMAN. Yes.

Mr. LINCOLN. Rather than the charge?

The CHAIRMAN. Yes.

Mr. LINCOLN. I think there is a value in the privilege of reconsigning. There is no question about it.

The CHAIRMAN. That can not very well be availed of unless you know what route the freight goes by.

Mr. LINCOLN. That is one of the reasons why we want the privilege of routing, so that we can reconsign. Roads have diverted freight by other routes than that desired by the shipper, and when it arrived at its destination they could not reconsign it, because there was not a joint rate beyond that point.

The CHAIRMAN. Is it the common practice of shippers to keep track of their cars from day to day while they are in transit?

Mr. LINCOLN. It is, as to certain traffic.

The CHAIRMAN. With a view of changing the destination?

Mr. LINCOLN. I would say, as to parties located in the East, as to feed and grain, and parties in the South, as to hay, they are kept informed so as to make reconsignments. A good deal of that is done.

The CHAIRMAN. Is it practicable to do that where the cars are shipped over a route that is not designated by the shipper?

Mr. LINCOLN. He does not know who to look to for the information when it is shipped over a route that is not designated by the shipper. When the shipper designates the route he is getting that information. That is one of the features that I referred to when I spoke of Nashville, Chattanooga and St. Louis. If that business had been diverted over other railroads we could not have had the information we received.

Mr. FAULKNER. Were those arrangements made before the goods were shipped?

Mr. LINCOLN. Yes.

Mr. FAULKNER. They had to be?

Mr. LINCOLN. It would have to be arranged for in advance in order to secure that information, Senator. Certainly those arrangements are made in advance.

The CHAIRMAN. Is it necessary to make the arrangements in advance?

Mr. LINCOLN. To get that telegraphic information it is necessary to make the arrangements in advance.

The CHAIRMAN. I have gone into the office at Chicago to learn where cars were, and have done so; and there was certainly no arrangement made in advance.

Mr. LINCOLN. But you knew what route they were moving over.

The CHAIRMAN. After visiting several offices I ascertained where it was, not knowing what route it was moved over.

Mr. LINCOLN. The fast freights in St. Louis have what they call "a manifest," or fast-freight report. If you happen to know what line the shipment went over you can get information as to that car on that line. In St. Louis we ship a great deal of flour to the East, and we get the reports on the flour from the fast-freight line agents. It has been routed and we know where it is, and they keep us informed, because they keep track of the shipment as it passes the various junctions.

Mr. TOWNSEND. Here is a situation that is common up in Michigan: A great deal of hay is raised and it is shipped down into New York, I will say. That hay is, perhaps, consigned to New York. There are several roads that lead down there. If they consign it over the New York Central their agents are out selling the hay. Perhaps it is not sold when it is shipped. They can divert it in some common point territory and have the hay shipped there if they know which line it is coming by. Is not that a great privilege?

Mr. LINCOLN. It is. The same thing is true at Boston; the same thing is true at Hartford, and at Mansfield, and at many other points in the East. The shipper has to know the route by which that freight is going, and it must go the way he has directed, in order that he may get that advantage in transit. That is true as to milling in transit. I will cite the case of a mill that is located at Hamilton, Ohio. There are there the Vandalia, Cincinnati, Hamilton and Dayton, and the Pennsylvania Railroad. That mill buys its wheat in St. Louis. It has to. The mill at Hamilton requires that its business shall come in over the Vandalia Railroad and out over the Pennsylvania. Otherwise it will not have the milling in transit privilege, and the joint rate between the Vandalia and the Cincinnati, Hamilton and Dayton is that way. If it comes in over the Cincinnati, Hamilton and Dayton it can not get the benefit of the present privilege, because there is no through rate published by the Cincinnati, Hamilton and Dayton on that route to the East. Those rates obtain at various milling points in the interior. The miller must have the wheat come by certain routes, in order that he may be able to work in the through route on flour, as it comes up. That is the milling in transit.

Mr. ESCH. Suppose that the market to which the goods are originally sent is glutted and the price is low. Would it be of advantage to the consignor to divert the goods in transit to another market where the price is higher?

Mr. LINCOLN. Certainly. That is the reconsignment that Mr. Townsend was referring to.

Mr. ESCH. That would be one of the objects of rerouting in transit?

Mr. LINCOLN. That is one of the objects. There are numerous objects in the way of getting the benefit of competition, and, where you are reconsigning on the through rate, to get the benefit of that through rate. We have, I think, more experience in connection with the routing question on business that has a transit privilege such as milling, or a reconsignment privilege, than any other class of freight;

because in that event the through rate is absolutely dependent upon the route. If it moves in over one route you can not get the through rate, whereas if it moves in by another you can.

The CHAIRMAN. Is that all on this subject, Mr. Lincoln?

Mr. LINCOLN. That is all on that subject.

The CHAIRMAN. Then we will take our adjournment until tomorrow morning at 10 o'clock.

(The committee thereupon, at 10 o'clock p. m., adjourned until tomorrow, Tuesday, February 1, 1910, at 10 o'clock a. m.)



HEARINGS

·BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
OF THE HOUSE OF REPRESENTATIVES

ON BILLS AFFECTING

INTERSTATE COMMERCE

PART VII

WASHINGTON
GOVERNMENT PRINTING OFFICE
1910

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,

HOUSE OF REPRESENTATIVES.

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BILLS AFFECTING INTERSTATE COMMERCE.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Tuesday, February 1, 1910.

The committee met at 10 o'clock a. m., Hon. James R. Mann (chairman) presiding.

STATEMENT OF MR. T. C. LINCOLN—Continued.

THE CHAIRMAN. Whenever you are ready you may proceed, Mr. Lincoln.

Mr. LINCOLN. The next matter upon which we wish to appear is that of, as I call it, giving to the Interstate Commerce Commission the power of injunction or suspending proposed changes in rates. You will find this in the bill on page 17, commencing with line 12 and ending with line 9 on page 18. The interstate commerce act prohibits the charging of unreasonable, unjust, excessive, or discriminatory rates, but under existing law rates can only be attacked after they have become effective and then only upon formal complaint and after a due hearing. Shippers have felt at various times that purposed advances in rates resulted in the establishment of exactions which would be found contrary to law and have undertaken in one form or another to set these purposed advances aside by injunctive measures. It is in view of the complications growing out of these orders issued by federal courts and the impracticability of a great number of small shippers securing protection that recourse is had to the amending of the interstate commerce act so that power will be vested in the Interstate Commerce Commission, a body by practical experience well informed upon rate matters and commercial conditions, the power to suspend, in its discretion, upon a *prima facie* showing, the purposed advance, that chaos and harassing litigation may be avoided. It is not sought by any means to take away from carriers the power to initiate just and reasonable rates, but only the initiation of unlawful and excessive rates.

By all means such an amendment should be enacted as law, and our common carriers should have confidence in the integrity of the men administering the law to the same extent that we are required to have confidence in the same administration in protection of shippers' interests.

We have recommended that the Interstate Commerce Commission be given power, upon a *prima facie* case as to the unreasonableness thereof, to suspend, not for an indefinite period but for a reasonable period, purposed advances in existing rates, rules, or regulations, pending an investigation and hearing. While carriers contend this may be far-reaching, its importance lies in the fact that it is protective of the shipper. It does not purpose to deprive the railroads of power

to initiate changes in rates nor to place an initiative rate-making power in the hands of the Interstate Commerce Commission. It merely contemplates placing with the Interstate Commerce Commission the power to determine whether the purposed change is reasonable or unreasonable. The power of suspending purposed advances in rates has been exercised by some of the federal courts. We believe this power should be placed with the Interstate Commerce Commission, a body better able to determine the equities of the case than the courts, their entire study being one of transportation.

Railroads, in making changes in their rates, either in the way of reductions or advances, give much consideration to the subject. They are not made on the spur of the moment, and sometimes are pending for more than a year.

When they do this on their own option—that is, using their own time about making the change, which is not an uncommon occurrence—it can not be contended that a slight further delay pending an inquiry is going to prove burdensome or unjust. If the carriers know that there is an opportunity before their rates become effective, instead of after, for an inquiry into the reasonableness thereof, greater care will be exercised to make such changes as are reasonable and just and fully warranted. They should feel so confident of their action as to be able to make a substantial showing before the commission; failing in which there is no reason why shippers should be made to suffer for a wrongful act on the part of carriers as is required under the present law, for where a great multiplicity of shippers are involved it is practically impossible to secure reparation.

While it may be held that in some cases the purposed advance is lawful and should stand, and that the railroads would sustain damages for which there is no recourse, the reverse must likewise be considered, for the shippers have sustained damages when the acts of carriers were found unlawful. You take the lumber cases—I refer to the yellow-pine cases—and there was probably involved \$1,500,000 to \$2,000,000. They applied for reparation, and the shippers there have secured back about 66 or 70 cents on the dollar. In that case the shipper is suffering. In the northern Pacific coast case there have been innumerable reparation suits brought in the case by the people who did not put up their bonds and now have to go in to get their reparation. That is the position we take. We do not wish to deprive the railroads of the initiative, but where they do initiate a rate they ought to be able to defend it and make a *prima facie* showing.

Mr. ESCH. When this matter was up before I think a principal argument against giving the commission the power to hear and determine a rate in advance of its going into effect was that that would result in a fixity of rates, and the railroad company would therefore not care or dare to lower a rate. What is your contention in that regard?

Mr. LINCOLN. I do not agree with that contention at all. I will say this, that with the commission having power to review the proposed advance in rates, the carriers are going to be more careful as to any advances they are going to make, and not put them in and then leave it to be developed by subsequent events as to whether there was an error; not as to subsequent events entirely by the commission, but as to actual results upon the traffic. I believe that no rates would be changed under existing law if there was no com-

mercial necessity for the change, and if there is a commercial necessity to make the change, we can make it under this proposed amendment, because if they do make it they can defend it, or they can make it as they do to-day. They will not make changes in rates unless there is a commercial necessity for it. It is going to have the effect of making rates more stable. The shippers want that as well as the railroads. We want to get rid of this constant fluctuation of rates. But there are times when commercial necessities would require the lowering of a rate, and there is no one appreciates that fact any quicker than the railroads. It is a business proposition with them.

They will never make a reduction unless it is a business proposition. They will treat it in that way. There will be no demand unless it is a necessity, as a business proposition, to stimulate the business or to protect in case of congestion, or to have the opportunity to dispose as they go, and get money into the country. It is a business proposition that is back of every reduction in the rate, and has been from the time we first started.

Mr. TOWNSEND. What was back of the proposition to compel the commission to state its reasons in writing when it sustained a tariff?

Mr. LINCOLN. Well, Mr. Townsend, I have thought a great deal about that matter of the commission setting forth in detail why they do a thing. It seems to me that the conclusions are the things to be dealt with, and what the reasons leading up to those conclusions were I do not think ought to be stated. I think there has been too much stated in the past in rendering opinions.

Mr. TOWNSEND. We have thought it wise in the past to compel a statement of the reasons for granting a temporary injunction or restraining order without notice, and this question has been up a number of times as to whether this ought not to contain a provision compelling the commission to state its reasons.

Mr. LINCOLN. I can see no objection to it, but as I say, I would have enough confidence in that body, as I would have in any judicial court body in this country, so that I would feel that when they came to a conclusion they had a good reason for it.

Mr. ADAMSON. They might state the wrong reason.

Mr. LINCOLN. I have known that to happen, where the conclusions reached and the arguments leading up to them were not in harmony, and the reasons would weaken the conclusions, or there were points brought up in the statement that would weaken the conclusions.

Mr. TOWNSEND. Some of the carriers have presented this to me, that unless the commission was required to state its reasons for suspending the operation of the proposed rate, the commission would get in the habit of suspending all rates. Of course it does not appeal to me as of any importance, but I was wondering what your view about that was.

Mr. LINCOLN. My view is that there is no objection to the commission stating the reasons. I do not think it is binding, at all. I think the conclusion is what you have got to look to; and I say I have, and I believe we all ought to have, sufficient confidence in our judicial bodies to think that they will not upon a mere whim change a rate—make a decision. There must be something tangible back of their decision or they would not make it.

The CHAIRMAN. Have you considered the legal aspect of the question, or does that concern you at all?

Mr. LINCOLN. I would not say that I have considered the legal aspect, because I am not a lawyer; I am just a mere novice, a transportation man and business man.

The CHAIRMAN. Of course you understood that the commission is not a court.

Mr. LINCOLN. I understand that it is an administrative body.

The CHAIRMAN. And that the authority they have is to ascertain the fact where Congress has declared that a certain fact shall be the guide. We provide in the interstate commerce law that a rate shall be just and reasonable. All that the Interstate Commerce Commission does is to ascertain the fact, as an administrative body, as to what is the just and reasonable rate. Now, can we confer upon them authority to declare what rate shall be charged, before they have ascertained the fact?

Mr. LINCOLN. Well, as I say, I am not a lawyer. I feel that that is where it should be, because they are better informed on that than any court that I know of, and there should be some means by which an unjust rate can be prevented; if there is one proposed to be established, that it may be prevented.

The CHAIRMAN. This is like an injunctive proceeding in a federal court. We can not confer upon the Interstate Commerce Commission legislative authority except for the purpose of carrying out the administrative determination of the fact which we have declared shall be the guide.

Mr. LINCOLN. I could not discuss it in a legal aspect at all.

The CHAIRMAN. Very well.

Mr. LINCOLN. Mr. Butler might be able to speak upon that point; he is counsel with us. If you would like to hear from Mr. Butler at this time I would be glad to yield to him.

The CHAIRMAN. We can hear from him later.

Mr. ESCH. Reverting to that question I put some time ago, would there be a tendency for a road to lower a rate if you gave the commission this power, on this ground, that if the rate were lowered by a carrier, it would not be able to raise the rate because the lowered rate would be *prima facie* reasonable?

Mr. LINCOLN. I do not take much stock in that argument. As I say, no rate is reduced unless there is a commercial necessity for it. Now, good business is what determines the rate ordinarily. There would not be a change in any of these rates unless there was a commercial necessity for it; there is an object in making the change. If it is not going to increase business—and that is what the railroads want—they will not reduce the rate, anyway.

Mr. ESCH. So that you think stability of a rate is really more valuable to a shipper than the lowness of a rate?

Mr. LINCOLN. The stability of the rate, and that those rates be reasonable; that is what the shipper wants. It has been our desire all the time. We are not asking for low rates, but for stability of rates and reasonable rates; rates adjusted to our competition; but stability of rates. It is the violent fluctuations that injure the shippers, as a matter of fact. It is going to avoid, in my judgment, a great deal of litigation, and it is going to be protective of the smaller shippers, the large body of shippers, who can not secure

reparation. Take the Texas rate cases, they made a 10 per cent advance into Texas and that has now been pending since August, 1908, and I do not believe a decision can possibly be rendered in that case before July or August next, because the arguments are going to be made in March.

Mr. STEVENS. In what tribunal is that case?

Mr. LINCOLN. Before the Interstate Commerce Commission; brought in the State of Texas, but with a great many intervenors. There is a decision that will be two years after the litigation brought in the State of Texas. A retail house here, a jobbing house here, has been moving trade under those rates for two years, and yet in the petition for the establishment of the maximum rate as the just and reasonable rate is the demand for reparation for the excess rate during the interim; coupled with that demand is the demand to be awarded reparation. The rates are not made on impulse. The advances made in Texas were not concurred in by all the lines. A great many traffic men thought they were a mistake, before they were made.

I think the bill is drawn better than our original recommendation. The original recommendation provided that the rate should be suspended until the hearing was completed. This provides now that the rate shall be suspended for sixty days, to give an opportunity for hearing, and if the hearing is not completed at the end of sixty days the rate shall go into effect, just as under the present law.

Mr. ESCH. Right on that point I would like to get your views as to whether that sixty-day limitation is too long, in view of the great number of determinations that the commission might have to make.

Mr. LINCOLN. I think the commission is so well informed upon all the transportation problems, having dealt with these problems everywhere, that they will have sufficient information within sixty days upon which to make the decision as to whether the case will have to go on upon its merits.

Mr. TOWNSEND. It would be an incentive to them, also, to get busy, perhaps?

Mr. LINCOLN. Yes.

Mr. STEVENS. How can they get any busier than they are now?

Mr. LINCOLN. They are very busy now.

Mr. TOWNSEND. But if they have sufficient information to decide the case, why do they not decide it now?

Mr. LINCOLN. When we are going into the hearing of a case the intervenor has got to set forth his brief and to make his statement, and the railroad has a right to make its reply in sixty days, and with the general information that the commission has upon these subjects this reply and defense would be—

The CHAIRMAN. Unless they make a final withdrawal of the case within sixty days then the rate goes into effect?

Mr. LINCOLN. The rate goes into effect.

The CHAIRMAN. Now, is it possible in any case of importance for the commission to make a final determination of the matter within sixty days' time?

Mr. LINCOLN. They have ninety days under this proposition—thirty days before the rate goes into effect and sixty days additional, which would give them ninety days for determination.

The CHAIRMAN. The complaint ordinarily would not be made until towards the end of the thirty days?

Mr. LINCOLN. It would be made very shortly after the rates are announced.

Mr. STEVENS. Is it fair to compel the commission to practically adjudicate such a complicated matter as you have described, in this case from Texas, within that limited time?

Mr. LINCOLN. They could not in that case.

Mr. STEVENS. Could they in any case of that magnitude?

Mr. LINCOLN. Yes, in a great many cases, if they can get at the facts they can.

Mr. STEVENS. Would not that tend rather to compel more cases to go to the courts and not abide the final decision of the commission?

Mr. LINCOLN. I can not see that; no, sir.

Mr. STEVENS. If the cases are decided too hastily and do not receive due consideration, if they do not take into account the vast multitude of conditions and circumstances that attend the establishing of these rates, will not that tend to create dissatisfaction and to compel litigation rather than avert it?

Mr. LINCOLN. I would state that I believe the effect of this proposition will be to stop litigation rather than perpetuate it.

Mr. STEVENS. That is what we would like to have done.

Mr. LINCOLN. If on a proposed advance a *prima facie* case were made that the advance was unreasonable the railroad itself would ask permission to extend the time in which to continue its old rates until the rates were settled. If the *prima facie* case was made that the rates were unreasonable they would not want to put those rates into effect and have all these suits for reparation after the rate was settled.

Now, the commission is not going to take cognizance of every complaint. I do not believe the commission is going to take cognizance of every complaint in a case involving a single shipper. The single shipper has his remedy to-day under the law, because he can apply for reparation and he can submit his whole case.

The CHAIRMAN. What can the commission do when a complaint is filed before it except to take cognizance of it?

Mr. LINCOLN. It can not do anything else. It has to take cognizance of it.

The CHAIRMAN. You said they would not take cognizance of an individual complaint.

Mr. LINCOLN. I say they do not have to give an injunction on such a case, where the man can secure his protection under the present law.

The CHAIRMAN. They do not have to give an injunction, but they have to consider the complaint.

Mr. LINCOLN. Yes, they have to consider the complaint.

Mr. STEVENS. Why is it not more important that the commission should take cognizance of and give the utmost consideration to the claim of a small shipper than to the claim of an aggregation of large and powerful shippers who are more able to protect themselves?

Mr. LINCOLN. I think you have misunderstood me. This proposition here is for no other reason in fact than to protect the multitude of small shippers. If I am engaged in the iron business, I will say, and I am handling iron only, and I am shipping from one point to various destinations, nobody else is involved in that traffic but myself. Under the present law I have all the protection I want, because I can attack the rate and demand reparation, and if the rate

is excessive, the evidence is tangible; they can get at my shipmen and can give me reparation. But to-day, under the existing conditions, when you have 200 or 300 shippers who have to depend on the reparation clause of the act to get their protection, they can not do it. The single shipper is not involved, because he can get his reparation. It is done every day. You see reparation claims every day before the commission by reason of unreasonable rates. The can put in a statement of all their business. It is only one individual.

The CHAIRMAN. That would protect the shipper, but does not protect what my colleague from Illinois calls "the ultimate consumer, because when he pays the rate charged that is added to the price of that article."

Mr. LINCOLN. I do not agree with that theory. A man who is selling his goods has got to sell his goods in competition, and if the advanced rate did not affect his traffic he would not object to the rate. Ordinarily the shipper is not interested in the rates, but the consumer is. But when the shipper attacks the rate it is because of some competition that compels him to do it.

The CHAIRMAN. Here is a condition which is a very live one, as I understand. There has been a good deal of talk in the last year or two about the rising tendency in rates between New York and Chicago and the general rise of rates in official classification territory.

Mr. LINCOLN. Yes.

The CHAIRMAN. Where all shippers would be equally affected. They are interested to prevent that, as I understand it.

Mr. LINCOLN. Yes; it is not because of the increased cost on goods by reason of the increased cost of transportation.

The CHAIRMAN. It is not because certain people get preference but it is because of the proposed increase in the rates?

Mr. LINCOLN. Yes.

The CHAIRMAN. In that case would it be possible for the Interstate Commerce Commission to hear that case and determine it within sixty days of the time that the rate was to take effect?

Mr. LINCOLN. I do not think that it would. It is a very large amount of territory which is involved. They might be able to get those facts as conclusively as they could in the federal court where the injunctions have been made in the federal courts.

The CHAIRMAN. Take the yellow-pine cases.

Mr. LINCOLN. Yes.

The CHAIRMAN. Would it have been possible for the commission to have heard and determined the question of the increase in rates upon lumber from the South within sixty days?

Mr. LINCOLN. They could not have heard the case through, no, since the case was decided and carried through to the final conclusion. The rates would have had to have gone into effect in sixty days; but all parties would have been in court.

The CHAIRMAN. But that would have been very little satisfaction to them if the rate went into effect. Is there any case of importance of an increase of rates except in the case of an individual, where the case can be heard on its merits in sixty days' time?

Mr. LINCOLN. I believe the merits of the case can be very well developed within sixty days' time, and I believe the *prima facie* showing will result in negotiations by which the shippers will not suffer. I think this is paving the way for the bringing together of the com-

flicting interests before the commission, before a rate does go into effect, and the railroads themselves, or the shippers themselves, either one side or the other—both can be convinced when they are wrong—will be so convinced that we will go into the real merits of the case and suspend the rates independently until the controversy is settled. I think this is going to have a good effect.

The CHAIRMAN. You think, then, that the railroads would voluntarily suspend, themselves, the putting into effect of these rates?

Mr. LINCOLN. Yes, I do believe so, if a *prima facie* case is made they will voluntarily do it.

The CHAIRMAN. Then they would have to do that within thirty days' time, because they could not do that without giving thirty days' notice. You would have to convince them within thirty days.

Mr. LINCOLN. The commission can suspend on three days' notice, by the law. They can do it on three days' notice.

The CHAIRMAN. The commission might permit them to do it. The conditions which induced the carriers to make the change may again themselves change within sixty days, and render the change unnecessary.

The CHAIRMAN. Yes; they might not require any action of the commission at all.

Mr. ADAMSON. The commercial interest which Mr. Lincoln refers to as prompting all the rates, is the desire on the part of the carriers to get a little more money, and if you delay for sixty days favorable conditions may occur that will render the change undesirable.

Mr. LINCOLN. I want to be just to the railroads. I have made a good many rates in my time. We have thought that we ought to have changes in rates and have made them and given notice of the changes in rates. It is impossible for the railroad man to get in touch with all the people involved in that business, and it has developed after the change was made that possibly we had made a mistake. We did not have all of the information. I think this measure in the act giving, as I call it, the power of temporary injunction or temporary suspension of the rate is going to have the effect of bringing the interests together. The railroads will have the matter presented to them in the true light—not a reflected light, that they are going to have more money and so forth, but the true light. If they are reasonable men, and if it is going to hurt them in their business, they will be very glad before that tribunal or commission to suspend rates until the controversy is determined.

The CHAIRMAN. Then the main purpose of this will be to let the railroad companies and shippers have further time for negotiation?

Mr. LINCOLN. That is what it will result in. Now, when the railroad companies are advancing the rates, they can not get the public all in with them. They deal among themselves. They believe it is not going to injure the commerce of the country. There are certain places where they do not know about the traffic. They do not know about the effect on business there. I have advanced many a rate that stopped business; but I was very quick to put it back again so as to encourage business again. This is going to bring the shippers and the railroads together. If their changes are unreasonable and affect traffic, it will bring them together before the rates go into effect, and those two bodies will get together and agree upon something, possibly with the advice and aid of the commission in bringing out the facts.

The CHAIRMAN. It would have the same effect, then, if we would provide that a rate should not go into effect until ninety days after notice?

Mr. LINCOLN. I do not think so.

The CHAIRMAN. It would give you the same time to get together.

Mr. LINCOLN. We have the same time now; but you can not attack a rate until it goes into effect, or go to the commission with a rate until it goes into effect. Now, this gives the commission a certain power. We can not go to the commission on a proposed advance in rates; we have got to go to the railroad. Under this you can go before the commission.

The CHAIRMAN. All the commission would have the power to do even then would be to hear the case on its merits?

Mr. LINCOLN. Yes.

The CHAIRMAN. And that you have said they could not do?

Mr. LINCOLN. No; I do not say that.

The CHAIRMAN. In the sixty days' time they have?

Mr. LINCOLN. Sixty days?

The CHAIRMAN. Yes.

Mr. LINCOLN. They can get at the merits of the case and so develop it that further negotiations can be continued and keep everything in status quo.

The CHAIRMAN. But the commission has no authority to keep anything in status quo after sixty days' time.

Mr. LINCOLN. They have not, if the railroad insists on putting in its advance; but if the railroad has been favorably impressed with the arguments received they would no doubt ask for authority from the commission to take an extension of the time.

The CHAIRMAN. But if the railroad was obstinate, it might go on; you could not prevent that?

Mr. LINCOLN. No; not after sixty days, unless it was settled before the expiration of the sixty days. I do not think the railroads will be obstinate. They are in business just like anybody else; they are in business to handle the shippers' business. They can not exist without the traffic, and we can not exist without the railroads. There is a mutuality about it.

The CHAIRMAN. Have you discovered anything that was easier to negotiate with a railroad company directly than through the commission?

Mr. LINCOLN. There are many negotiations which are going on between the carriers and shippers in which each is helping the other. There have been faults on the part of the shippers and faults on the part of the carriers, and they have been corrected; and I want to say that negotiations are going on finely, and many of these negotiations are conducted through the Interstate Commerce Commission, and we ask their committees to confer with us, and these conferences and negotiations have resulted in conclusions being reached which are not issued in the shape of orders, but they are approved by the commission on the facts developed, but not made an order, so that it can not be contested. Negotiations of that kind are now going on before Professor Adams in regard to all our freight claim business.

Mr. STEVENS. Have you any idea if such an act as this went into effect what proportion of the advances in railroad rates would be resisted by the shippers and producers under such a section as this?

Mr. LINCOLN. No, I could not say as to that.

The CHAIRMAN. Do you think there would be any danger of a congestion of business before the Interstate Commerce Commission, caused by this and similar conditions?

Mr. LINCOLN. No, I do not.

The CHAIRMAN. Do you think that the business can be cleared away just as well?

Mr. LINCOLN. I think it will clear up more suits than it will make—the fact that it is there—absolutely. We have had a great many advances made in one class of commodity in St. Louis, in grain commodities, of which we have not complained as our people have not complained of the rates. We have at times complained where some of them were excessive, and negotiations have been conducted with the carriers.

Mr. STEVENS. Do you anticipate that there would be any difficulty in reducing rates with the railroads if they find they can not advance them?

Mr. LINCOLN. As to that I do not think there will be any greater strenuousness than there is now. We are not reducing rates now unless it is compelled as a commercial necessity.

Mr. TOWNSEND. This is to allow the commission or the shipper to commence the investigation of an unjust rate immediately after notice is given?

Mr. LINCOLN. Yes.

Mr. TOWNSEND. And it simply lodges with the commission a power of suspending that rate if in its judgment it can dispose of it in sixty days?

Mr. LINCOLN. Yes.

Mr. TOWNSEND. It would not tackle a proposition that it was not convinced it could dispose of, that on a *prima facie* showing was unjust?

Mr. LINCOLN. I have a suspicion that the commission would not suspend a rate unless there was a *prima facie* case made.

The CHAIRMAN. Is it not a *prima facie* case to begin with, if a rate has been in existence for a series of years and the railroad company proposes to advance it?

Mr. LINCOLN. That that rate should remain pending an inquiry, that has been held more or less as a *prima facie* case. If a rate has been in effect for a long, long period, *prima facie* it was reasonable or it would not have continued through that long period. But when the facts are brought out they will see that it is wrong and that the rate should have been advanced—could reasonably be advanced. There are a great many rates in effect to-day that have gone to a very low basis, which were forced there by reason of sharp competition and by reason of the conditions before the passage of the Hepburn Act, that should be advanced to-day—could be advanced; I will not say should be, but could be—and no injustice would be done in making the advance.

Mr. WASHBURN. Do you think the railroads are to-day carrying any appreciable amount of their business at a loss?

Mr. LINCOLN. I have thought they were doing some of their business at a loss, judging from their rates on some things.

Mr. WASHBURN. In what lines, particularly? Is the matter sufficiently well defined in your mind so that you could indicate the classes of business?

Mr. LINCOLN. I think there are some coal rates that I have felt were rather low. There are some grain rates that I have felt were rather low. Also there are some cement rates I felt were rather low. There has been a question in my mind whether there was any profit in them. All of those rates that I am referring to have been compelled by competition between a plant, for instance, located at one point competing with a plant located at another point. One haul, as an illustration, may be 10 miles and the other may be 80 miles. Of course they are going into a common market. The rate that bears on the shorter haul compels a very low rate for the longer haul, or that industry could not compete in the common market.

Mr. WASHBURN. The burden of making dissimilarly located places competitive has made the rate too low?

Mr. LINCOLN. That is what has forced them; competing in a common market from the various points of origin is what has caused most of the railroads' low rates. I sometimes speak as a railroad man. I am not a railroad man. I wanted to make a suggestion as to a slight change on page 17 of the bill, in lines 15 and 16.

Mr. SIMS. What bill is this you are considering?

Mr. LINCOLN. It is the bill H. R. 17536. In line 15 on page 17 I want to strike out the words "affecting any rate, fare, or charge." That will make that sentence read:

Whenever there shall be filed with the commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice the commission shall have, and it is hereby given, and so forth.

I ask the striking out of the words "affecting any rate, fare, or charge," because it would confine it to an investigation as affecting a rate, fare, or charge. Now the commission has jurisdiction over regulations.

The CHAIRMAN. Not affecting rates, fares, or charges?

Mr. LINCOLN. It would be confined to rates, fares, or charges, under this language.

The CHAIRMAN. Has the commission jurisdiction over regulations not affecting rates, fares, and charges?

Mr. LINCOLN. Yes; for instance, I refer to the car distribution, where the federal court has absolutely said that the commission has power. That is a regulation, as to the distribution of cars.

The CHAIRMAN. But the law only gives them authority to make regulations over matters affecting rates, fares, and charges.

Mr. LINCOLN. That is what I was afraid of here. Rules and regulations are principally affecting rates, fares, and charges. Why not stop with the words "any new individual or joint regulation or practice?"

The CHAIRMAN. I quite agree with you that making the change here would not make any difference at all in the power of the commission, unless you were to go a good deal further. If you had carefully examined the so-called Mann Bill, you would have found that that was carefully covered there in the proper way.

Mr. LINCOLN. I have read your bill, but I have not examined it as carefully as I have this, because these different features were made in this bill. That was the suggestion I had to offer there. [After examination of bills.] My attention has just been called to this, that in line 6 on page 16 the same words are used. If it was

given consideration in one, it should be in the other. I merely brought that up in the car distribution case, which was not on a rate or a charge in the classification. It was a regulation in regard to the distribution of cars. That is all that I had to say as to that.

Mr. ESCH. Would not this provision shift the burden of proof as to the reasonableness of the rates upon the railroad company?

Mr. LINCOLN. Yes.

Mr. ESCH. As it is now, the burden of proof is upon the shipper before the commission.

Mr. LINCOLN. The shipper has got to make his proof. He has got to show that the rate is unreasonable.

Mr. ESCH. He has got to make his case.

Mr. LINCOLN. He has got to make his case; yes.

Mr. ESCH. Now, if the railroad company makes this rate and the commission suspends it, the burden of proof is upon it to show that the advance is reasonable and just?

Mr. STEVENS. I would like to make an inquiry concerning a general subject not especially pertinent to this, but in order to have the opinion of Mr. Lincoln on record, as to the reduction of rates by railroads in certain cases. Do you know, in your long experience, of any rates or classes of rates being reduced by the railroads for the sake of destroying water competition?

Mr. LINCOLN. Yes, sir.

Mr. STEVENS. Has it been a common practice?

Mr. LINCOLN. I do not find that it is the practice to-day. It was the practice.

Mr. STEVENS. How long ago?

Mr. LINCOLN. Well, I would say in my own personal experience I have given instructions to our agents to take business at any price to keep it from going to boat lines.

Mr. STEVENS. On the rivers?

Mr. LINCOLN. Yes.

Mr. STEVENS. It is not necessary for it to be practiced to-day?

Mr. LINCOLN. No, sir. Of course there would be some difficulty in doing that to-day, because under the law you have to publish your rates. In those days we did not publish our rates. We just said we would take the business.

The CHAIRMAN. Can you give any instance where the railroad company has reduced its rates to a very low point for the purpose of destroying the water competition, and afterwards, when the water carriers were taken off, raised its rates to the old point?

Mr. LINCOLN. I can not say that was the purpose of the very low rates. They have established very low rates in competition with water carriers, and after the water carriers ceased doing business the rates have been advanced.

The CHAIRMAN. Will you give us an instance of that?

Mr. LINCOLN. Those conditions exist throughout the Mississippi Valley territory. I refer to those cases, those I am familiar with.

Mr. ESCH. You say they exist, or did exist?

Mr. LINCOLN. The condition exists where low rates have been made and they have been subsequently advanced. Some have not been advanced to a very great degree, while others have been advanced more.

The CHAIRMAN. We do not want to bother you about it, but this is a very live question, and if you can give us any specific information on that subject it would be a gratification to the committee to have the information.

Mr. LINCOLN. It is possible, Mr. Chairman, that while I am here I might give you references to the cases. That is, it shows on its face only by comparison as to the effect after the water competition was removed, as compared with the condition when the water competition existed. I may be able to get that record here.

Mr. STEVENS. We would like very much to have that.

Mr. LINCOLN. There is no regulation to-day that prevents railroads from lowering their rates below a paying basis.

Mr. STEVENS. In competition with water traffic?

Mr. LINCOLN. There is no legislation against it, but it would put them in a very embarrassing position when they got into court. They can not defend a rate unless there is a profit in it. They place themselves in a very embarrassing position as to their other rates. A railroad is not supposed to do business at a loss; it is supposed to be able to defend its rates. It can not do some business at a loss and rely on deriving profits from charging unduly high rates to others. I do not believe they can defend the carrying of any business at a loss.

Mr. STAFFORD. Who could criticise the action of a railroad company as to whether they had lowered a rate below a profitable point?

Mr. LINCOLN. I think the shippers at other points could criticise and ask reductions in their rates.

The CHAIRMAN. What is there in the law to prevent a railroad company from making its rate on a particular commodity as low as it wishes to?

Mr. LINCOLN. Nothing.

The CHAIRMAN. I thought you said the law did not permit it.

Mr. LINCOLN. No; but I say when they got into court they would be in a very embarrassing position, having to defend a rate that is much higher than that rate. They usually have to defend a rate and to show why it is put into effect, and they generally have to show that the business is handled at some profit. That is usually the showing they make; otherwise the other rate that is put in comparison with it would be held as an excessive rate.

Mr. ESCH. The Waterways Commission, which recently filed its recommendations, suggests that there ought to be some power in the Government, lodged somewhere, fixing the minimum rate on water transportation.

Mr. STEVENS. No; on rail transportation in competition with water transportation.

Mr. ESCH. Yes; on rail transportation in competition with water transportation. Would you lodge such a power with the commission?

Mr. LINCOLN. I would not.

Mr. STEVENS. I agree with you.

Mr. ESCH. Where would you think such a power ought to be lodged?

Mr. LINCOLN. I do not think there should be any regulation as to the minimum rates to be charged. I think it should be free for any line to make as low a rate as it wants to. I had expected to speak upon that question in my individual capacity, not as representing the league. These questions I have been discussing with you are those that have been indorsed by the league. I will ask the privilege of

speaking to you on some questions involved in the legislation in a personal capacity, as our people in St. Louis are affected.

Mr. STEVENS. If the object of legislation is to protect the people against unreasonably high rates, why should not the shippers protect the carriers against an unremunerative rate? You said you would not make a regulation to prevent the carriers from fixing a minimum low rate.

Mr. LINCOLN. No, sir; I would not.

Mr. STEVENS. Why are not the carriers just as much entitled to protection as the shippers?

Mr. LINCOLN. We are in an entirely different category. The carrier elects as to how low it wants to do its business, just as the shipper elects how low he wants to sell his goods. He can sell his goods at any price.

Mr. STEVENS. But the carrier makes a low rate for the purpose of getting the business and keeping it?

Mr. LINCOLN. Yes, sir.

Mr. STEVENS. No railroad ever had any hostile animus toward a water carrier as such, and the railroad makes a low rate in order to keep its business, does it not?

Mr. LINCOLN. I will raise the point that I think sometimes they have made low rates to prevent the water carrier from existing and being a competitor.

Mr. STEVENS. I am glad to have that made a matter of record.

Mr. SIMS. I live on a river in Tennessee where there is a boat from St. Louis to that section of the country. Certain railroads have built warehouses, or elevators I should call them, along the river, so that freight shipped, particularly by rail and then the balance by river, would of course have to go to those elevators. There have been cases there, and they are very numerous, where the railroads would only deliver freight to such steamboats as they saw proper, and would absolutely prohibit any steamboat not of that class from landing at their elevators, and prevent what we would call an independent boat from receiving the freight, or from receiving any except just what freight it could gather along where there were landings not connected with railway carriage at all. Do you think such discrimination as that ought to be permitted, or is it practical to prohibit it?

Mr. LINCOLN. I do not know whether the situation is this way or not. There were some through rates made by the general traffic agreements, agreements between the boat lines and the railroads, for the handling of the traffic from St. Louis. They are working under a joint through agreement. You could, of course, hardly expect to handle the business on the same terms through an independent line. The independent line would have to charge their local rate to the river. Now, whether these independent lines were asking that they be permitted to do business on the same terms as the joint lines, I do not know; but if the business was being taken to the port or the wharf or the levee at the river point, then it should be free to go out over any boat line from that point, where it is not handled under a joint through arrangement.

Mr. SIMS. Is it not further a fact that the railroads will themselves own or put in steamers to control the river traffic, and in case what is called an independent steamer should come in they will immediately

cut the rate to such a point that the independent steamer can not exist, and then as soon as the independent steamer goes out, the rates will be restored? Has not that frequently been done on the Tennessee River?

Mr. LINCOLN. I could not say. I am not sufficiently familiar with the Tennessee River proposition, and I do not know of any boats now owned by the railroads.

Mr. SIMS. My point is this, that they so operate the river traffic that the Tennessee River has not an independent line at all, except as to lumber and ties and heavy traffic.

Mr. LINCOLN. I think that has been the case on the lower Mississippi and on the Arkansas and the Red river; on the Red River particularly. Shall I proceed to the next subject?

The CHAIRMAN. Go right ahead.

Mr. LINCOLN. I will take up next section 7, pages 12 and 13. It may seem possibly a little strange that an organization such as the shippers' organization which I represent would be found here advocating anything that was favorable to the railroads. I wish to say that our organization of shippers will favor anything we think is right and just between the railroads and the shippers, and not wishing to be entirely upon the negative side, and believing that there should be some legislation along the line suggested in section 7, we desire to express ourselves upon that point, but at the same time to caution the committee that in the consideration of it the public must be protected.

Under the Sherman antitrust law, railroad associations for the purpose of maintaining agreed rates for the transportation of persons and property have been held illegal. Section 5 of the interstate commerce act likewise prohibits any carrier from entering into any contract, agreement, or combination with other carriers for the pooling of freight or a division of earnings. These two prohibitions have had the effect of breaking up a previous practice under which pooling of earnings or a division of freight was indulged in. The Sherman Act, under the Trans-Missouri decision, would also make unlawful various railroad associations which meet for the purpose of discussing and agreeing upon rates. A strict compliance with the decision in the Trans-Missouri case would, in our opinion, call for the extermination of these freight associations, and their existence as continued has been due to the fact that they are absolutely essential to the welfare of the shipping public as a medium through which negotiations are conducted by and with the carriers, and uniformity in rates, rules, and regulations is accomplished, matters very essential to our commerce.

We favor the legalizing of these various organizations that their work may be continued without constantly being in violation of the law of the land. The commerce act should be amended so as to permit carriers to meet and confer upon questions relating to tariffs, rates, and classifications: In the enactment of such a law extreme care must be taken. All articles of association or agreements under which meetings are held should be filed with the commission. Each and every association should be under the supervision of the commission. Proceedings of their meetings should be filed with the commission, who should have the right and power to review same, and, if deemed proper, a representative from the commission should be permitted to sit in the meetings. The commission should also have

the power to dissolve any association, the acts of which shall be found by the commission to be contrary to the law or public policy. Extreme care should be taken that these associations and the fixing of rates shall be subject to the same law and procedure as to the reasonableness and justice thereof as applies to the rates of individual roads, and no contract or agreement should be permitted which denies the right of carrier to take individual action. Section 5 of the interstate commerce act prohibiting the pooling of earnings or a division of freight to remain intact, which prohibition is necessary that the benefit of competition of service may be enjoyed.

Every shipper engaged in the handling of business of any considerable consequence, particularly in interstate traffic, knows how difficult it would be to treat with railroads through individuals and the necessity for traffic associations as a means of negotiations with all of the carriers in a particular district in the handling of broad transportation questions, joint through rates, and rates involving the interests of different communities.

We are favorable to these conferences. It is a medium through which the shippers can be heard by the various railroads, and we can recommend legislation in line with Section 7 so long as care is taken to prevent pooling or division of earnings, which is a form of pooling, and the commission would have supervision and power over those agreements if they are against public policy. I might say that I have, in addressing myself to this subject, spoken as a layman and not as a lawyer. There are possibly some suggestions there that would not be entirely legal or within the act.

Mr. RICHARDSON. Do you not give the Interstate Commerce Commission very great power and authority when you give it the right to pass upon any notice that this association is going to give that it is going to meet, and when you say that the Interstate Commerce Commission shall pass upon all their deliberations and inspect all their proceedings, and, in other words, prorogue such a meeting at any time it pleases and say that it must adjourn when the Interstate Commerce Commission gets ready? Is not that a very autocratic power you are giving over the deliberations of free men in this country?

Mr. LINCOLN. Possibly I have expressed it incorrectly as to the powers of the commission, but there is a power somewhere by which these meetings, if they are in restraint of trade, or stifling competition, can be stopped. Whether I have expressed myself correctly in putting it in the power of the commission I do not know, but I do not want an amendment to the act which is going to enable them to agree and stifle commerce or make arrangements that are contrary to the law.

Mr. RICHARDSON. I understand that, and that is all very proper, possibly; but in avoiding that danger and evil you are running into a much greater one, it seems to me, when you clothe any commission or organization in this country with the power to supervise and superintend and overlook all of the actions of a body of intelligent gentlemen who would meet together. Let them meet there and act as they please, and if the commission does not like it, as it comes under their jurisdiction, let them pass upon it; but I do not believe in controlling the general assemblies of this country by any power.

Mr. LINCOLN. I believe there should be a control as to proceedings in matters that will be in restraint of commerce. At the present

time the meetings have no right to exist, to agree on rates. It is a well-known fact, I think, that they are agreeing on rates, because the rates take effect on the same day and at the same hour and over all lines. It is necessary to commerce that there should be such an agreement. But in indicating this it seems to me that the propositions does prevent any unlawful act so far as agreeing upon anything in restraint of trade is concerned.

Mr. RUSSELL. If I understand you, you are not satisfied with section 7 as it is now written. Do I understand correctly that that is your position?

Mr. LINCOLN. Yes; I am satisfied with section 7 as it is now written.

Mr. RUSSELL. You are?

Mr. LINCOLN. That is, of course, retaining section 5 as it is to-day, and with this to be added. I would say that, as the shipping public, we would like to get more publicity than we would get under this proposition.

Mr. RUSSELL. The reason I asked the question was because I understood you to suggest that it would be wise to allow the commission, for instance, to have a representative at the board.

Mr. LINCOLN. We did. We suggested that, and we bring it before you for consideration; that feature of it, as to the extent to which publicity can be given to these matters.

Mr. RUSSELL. You think, then, that the various means of securing publicity through the commission should be engrafted on section 7?

Mr. LINCOLN. So far as it is possible and proper, it should be. I am a layman, as I say, and not a lawyer, and these matters are brought up in connection with the subject for your consideration as to these points.

Mr. RICHARDSON. While you are a layman, I have listened to you with a great deal of pleasure in your talk here. Do you not think, as a general proposition, that there has been a very decided improvement in the matter of the regulation of railroads as to the rates in the last five years?

Mr. LINCOLN. Absolutely.

Mr. RICHARDSON. Absolutely, a great improvement?

Mr. LINCOLN. A great improvement.

Mr. RICHARDSON. And at the present time it is doing very well?

Mr. LINCOLN. It is doing better, but there is room for improvement.

Mr. RICHARDSON. It is better than it was five years ago?

Mr. LINCOLN. There is room for more improvement.

Mr. RICHARDSON. But do you think there is a disposition on the part of common carriers to abide by the law and to regulate these matters from the standpoint of justice and fairness to the public more than you have ever seen before?

Mr. LINCOLN. More than there ever was before; and I wish to say that I believe it is very largely due—the relations between shippers and carriers are due—to the fact that there are getting to be representative shippers' organizations so that we come together with the carriers.

Mr. RICHARDSON. Is there not more cooperation to-day between the carriers and the shippers, and is there not more disposition between the two to try and be accommodating and follow the law, than there ever has been in this country before?

Mr. LINCOLN. There is more cooperation on the part of the shippers with the carriers than ever existed before, and whenever the shippers have desired to cooperate with the carriers, they have been ready to meet us; but notwithstanding all that we see in the press as to the cooperation on the part of the carrier with the shipper, the carrier is not often asking the shipper to come into conference. The overtures are made by the shipper.

Mr. RICHARDSON. And responded to by the carrier?

Mr. LINCOLN. Yes; they are responded to. In some cases they are not responded to, but generally they are.

Mr. RICHARDSON. Generally speaking?

Mr. LINCOLN. Yes.

Mr. RUSSELL. Do you think any of the cooperation of which you speak has been brought about in any degree by the attempt to regulate the carriers?

Mr. LINCOLN. Yes; certainly it has.

Mr. ADAMSON. Do you observe any remarkable degree of altruism, self-denial, and regard entirely for the financial interest of the other party on the part of the shippers or carriers?

Mr. LINCOLN. I do not know about that.

Mr. ADAMSON. Do they not always maintain their own interests, and do all they can for their own interests, on both sides?

Mr. LINCOLN. I suppose so.

Mr. ADAMSON. Do you not believe that if the shippers would do like the railroads, hire the best lawyers they can get at every point and let the railroads know that they are going to fight, the railroads would be just as considerate to them as they are under all this legislation and negotiation?

Mr. LINCOLN. They can not be represented by counsel in the same way as the railroads can.

Mr. ADAMSON. If they get the best lawyers, they can be. If they get the best lawyers they can get and let the railroads know that they are going to fight—if they are just as vigilant and fight for their rights as hard as the railroads do, they can make the railroads stand to it and give them a showing.

Mr. LINCOLN. It is very difficult to get the shippers combined upon fighting any case, and employing counsel.

Mr. ADAMSON. I have watched the law for twenty years and the legislation for ten years, and I think the court-house beats the legislature to death. Get good lawyers and let them know that you are going to fight. That is the way they do.

Mr. LINCOLN. They are equipped to handle cases in court.

Mr. ADAMSON. They are equipped because they hire good lawyers. If they are right, they make it off of you; and if they are not they pay for it.

Mr. LINCOLN. The shippers often feel that they can not hire the lawyers.

Mr. RICHARDSON. But you believe, as I understand your testimony, that there is a great deal of efficiency in the law regulating common carriers in the matter of rates?

Mr. LINCOLN. There is, yes.

Mr. RICHARDSON. And good has come of it?

Mr. LINCOLN. Oh, great good has come, for both the carriers and shippers. The carriers themselves have been benefited very largely.

Mr. TOWNSEND. You made another suggestion, as I understood it, and that was that the proceedings of these associations that met to consider these questions should be filed with the commission. Did I understand you correctly on that?

Mr. LINCOLN. That was a suggestion in my remarks. I might state that in dealing with that question we have proceeded with the idea of getting the facts as to what ought to be done, as to publicity, before the committee.

Mr. TOWNSEND. Have you made any suggestion as to an amendment to this?

Mr. LINCOLN. No, sir; I have not.

Mr. TOWNSEND. As I understand it, you agree with this section 7, with the exception possibly that you would like to have a provision permitting the attendance of a commissioner—one or more commissioners—at these meetings, and providing for the publishing and filing of the proceedings of the association with the commission?

Mr. LINCOLN. My suggestion was this: That in that line we would not expect the commission to attend these meetings, because it would be impossible. There are probably 25 meetings going on to-day in different sections of the country in that matter of rates, and they are separated widely. But if a commissioner wanted to go in on the discussion of any important question as to rate advances, the dockets being distributed, they might want to go in and sit with those gentlemen, and they might have the privilege to do so.

Mr. TOWNSEND. The commission have the right to determine the reasonableness of rates?

Mr. LINCOLN. Yes.

Mr. TOWNSEND. Either on complaint or on their own initiative?

Mr. LINCOLN. Yes.

Mr. TOWNSEND. Is not that going far enough to start with?

Mr. LINCOLN. Possibly it is. We discussed it at some length, and discussed it with counsel on this section, and the commission possibly have sufficient power under this section; but there is not quite as much, possibly, to the public as the public would like to have.

Mr. TOWNSEND. As a general proposition the shippers you represent believe that much good may come both to the railroads and to the shippers by these voluntary associations?

Mr. LINCOLN. Absolutely, yes, sir.

Mr. TOWNSEND. Provided that they do not fix rates that are absolute. Their agreements do not amount to a schedule under the provisions of this bill?

Mr. LINCOLN. Not until they are published.

Mr. TOWNSEND. Not until they are published; and they are subject to the same chances as to reasonableness and justice as all other individual acts?

Mr. LINCOLN. Yes, sir; the final act is subject to the same test as other rates are subject to.

Mr. STEVENS. Are not these agreements practically made now?

Mr. LINCOLN. Yes.

Mr. STEVENS. Under what authority?

Mr. LINCOLN. Gentlemen meet like we are in here, and we discuss a rate, and, "It is my judgment that a rate of 10 cents a hundred pounds should be established; what is yours?" "That is my individual opinion." "Mr. Joint Agent, we have all expressed our individual opinions. Please publish the rate."

Mr. STEVENS. Yes; so that this, if it were passed, would not change the practice as it now exists?

Mr. LINCOLN. This proposition is not going to change the practice as it exists to-day, but it will give us a free field to publish; and instead of meeting in secret, as they do now, they will meet in a proper way and have a representative of the commission with them.

Mr. STEVENS. This would nullify the decision of the Supreme Court in the Joint Traffic Association case, would it not?

Mr. LINCOLN. I do not think so, if they did not agree upon rates in restraint of trade. If they do any act that is contrary to the spirit of the antitrust law, that is another matter. But this provides that these associations may meet, they may confer, they may agree upon a rate, but at all times that rate must stand the test of the commerce act as to its reasonableness and justice.

Mr. STEVENS. The same as any other rate?

Mr. LINCOLN. Yes, the same as any other rate.

Mr. STEVENS. But that agreement may control the traffic of an entire section of the country?

Mr. LINCOLN. Those agreed rates?

Mr. STEVENS. Yes; it would practically control the business operations of a great section of the country.

Mr. LINCOLN. Yes, they do to-day

Mr. STEVENS. Yes, but if there is any disposition to complain, are they not subject to the restraint that they are extra legal. I would not say legal, but they are extra legal; and it imposes the utmost caution upon those who make them. Is that not a restraint upon the making of agreements now, and would not that restraint be removed if an act like this were passed?

Mr. LINCOLN. I do not see that there is any restraint to-day.

Mr. STEVENS. They do not pay any attention to law in making rates?

Mr. LINCOLN. Not in agreeing upon rates; absolutely not.

Mr. STEVENS. And you want to fix it so that they can have a law under which they can make any sort of rates affecting this vast volume of commerce?

Mr. LINCOLN. Yes; we believe this is a proper provision. It is a request more from the railroads than the shippers, but we favor it. We think it is a good thing for the shippers.

Mr. STEVENS. Is there not a third party to be considered in this transaction? You represent an aggregation of people interested in one line of business. These railroads represent an aggregation of people interested in another line of business. You want to combine and engage with each other as to what shall be done. What becomes of the consumer in all these combinations or agreements?

Mr. LINCOLN. Well, the consumer, I presume, is not organized. He should be thought of, of course.

Mr. STEVENS. That is just exactly it. What is the purpose of section 5 of the interstate-commerce law and of the Sherman antitrust law but to protect his interests?

Mr. LINCOLN. I think we should have to look after and protect his interests.

Mr. HUBBARD. How would the position of the consumer be changed? You say these things are going on secretly, and then they would go on

publicly if the same thing was being done; what is the difference in the condition?

Mr. STEVENS. No; I do not think it would be done.

Mr. HUBBARD. I understood Mr. Lincoln to say that it was being done secretly, and they wanted it done publicly.

Mr. ADAMSON. It is a coincidental agreement of individual minds at present.

The CHAIRMAN. There is competition between the railroads now?

Mr. LINCOLN. Yes, and there always will be.

The CHAIRMAN. I was asking if there is competition now between the railroads?

Mr. LINCOLN. Yes, sir: there is now, and there will be.

The CHAIRMAN. There is a tendency under that competition, or has been in the past, toward some reduction in the rates, or some prevention of the raising of the rates by reason of competition?

Mr. LINCOLN. Well, I think that the same conditions will exist only they are doing it lawfully under this proposition; that is going on now. Here is this tariff that I referred to. It is published by F. S. Leland. These rates take effect on February 7. They are all contained in one cover, all to take effect at the same time, and all alike. [Presenting pamphlet.]

The CHAIRMAN. You take this question of the increase in the rates, for instance, from the west to the east?

Mr. LINCOLN. Yes.

The CHAIRMAN. A good many people are considerably interested in that.

Mr. LINCOLN. In the seaboard territories.

The CHAIRMAN. Do you think there would be much hesitation on the part of the railroads up to date in raising those rates if they could have entered into an agreement, and all of them had entered into that agreement, to raise the rates?

Mr. LINCOLN. Why, there would have been no trouble to put up and advance the rates if they could all have agreed to it.

The CHAIRMAN. Do you not think it would have been done if they had had this authority?

Mr. LINCOLN. This authority?

The CHAIRMAN. Yes, to enter into an agreement.

Mr. LINCOLN. No, sir; because absolutely under this authority the individual can not be controlled. You can not compel anybody to agree to a rate.

The CHAIRMAN. Well.

Mr. LINCOLN. That is what it is to-day.

The CHAIRMAN. The purpose of giving that authority to make an agreement is to give some to some extent control over the question. If that is not the purpose, then there is no purpose in it.

Mr. HUBBARD. What is the real reason why they have not agreed?

Mr. LINCOLN. Difference of opinion.

The CHAIRMAN. The real reason they have not raised the rates is because some of them would not agree to it.

Mr. HUBBARD. That is what I wanted to get.

The CHAIRMAN. If they had had the power to make an agreement, they would have raised the rates before this.

Mr. STEVENS. Is not this a method of compulsion?

The CHAIRMAN. Of course it is a method of compulsion; that is what it is being proposed for.

Mr. ADAMSON. If, as you stated just now, in effect, you are not insisting on low rates, but reasonable rates, made with due reference to your competitors, why can not the shippers just go into a pool with the railroads and fix big enough profits for the shippers and the railroads, and let the ultimate consumer look out for himself and take what comes?

Mr. LINCOLN. I hope I am not going to be misunderstood. I said we are not advocating lower rates just for the sake of lower rates. Our organization represents the consumer as well as the producer.

Mr. RICHARDSON. The competition exists between the shippers and the railroads all the time?

Mr. LINCOLN. Yes, competition between railroads and shippers.

Mr. RICHARDSON. And the fact is that the position that the shippers take with reference to the railroads reacts on the consumers?

Mr. LINCOLN. Yes, always.

Mr. RICHARDSON. It can not be otherwise.

Mr. ADAMSON. Suppose you concede, at the wish of the carriers, the pooling power, and restrain it for a while under the power of the Interstate Commerce Commission, and it is found to work well, and everybody gets pleased and forgetful of what brought it about, will not somebody suggest that the Interstate Commerce Commission might just as well be relieved of the burden, and amend the law so as to let the pool stand without the intervention of the Interstate Commerce Commission?

Mr. LINCOLN. You make an error in asking the question. You say it permits pooling. If it permits pooling, I am unalterably opposed to it. I have been unable to read pooling into it.

Mr. ADAMSON. That depends upon how you spell it, you know.

Mr. LINCOLN. If it permits pooling I am opposed to it.

Mr. RICHARDSON. How can you possibly construe this section to mean pooling?

Mr. LINCOLN. I can not so construe it.

Mr. RICHARDSON. Neither deductively nor otherwise. I can not see how it permits pooling.

Mr. ADAMSON. If it is not going in that direction, it is not intended for anything.

Mr. LINCOLN. Gentlemen, we are favorable to it as shippers. We see no objection to the plan.

Mr. RUSSELL. You say that transportation companies are now doing secretly what this section 7 proposes to make legal? If that is true, and you surround the right conferred in section 7 with too many restrictions, will not the transportation companies say: "We prefer to go on with our secret methods of making agreements?"

Mr. LINCOLN. They are not going into effect secretly. They will say these are agreed rates, and to-day they are going not as agreed rates. There is nothing secret about the organizations; they meet and the public meets with them.

Mr. RUSSELL. Suppose they are not secret; they now pursue the method of meeting among themselves and agreeing, which you will now legalize by this action. I say if you place too many restrictions on the exercise of the right in that section, will not the transportation companies say: "All right, we will not go into them under that section, -but we will continue our present practices?"

Mr. LINCOLN. I will tell you, gentlemen, what I feel about it—that if such a measure is not enacted the department of prosecution has

to proceed some day to strike at these organizations, and if they are driven out of existence it is going to hurt the shippers. It has been held in several cases to be restraint of trade.

(At 12 o'clock m. the committee took a recess until 2 o'clock p. m.)

At the expiration of the recess the committee resumed its session.

STATEMENT OF MR. J. C. LINCOLN—Continued.

Mr. STEVENS. Gentlemen, the chairman will not be here for some time. He is engaged on the floor, and some of the other members notified me that they could not be here, but I think we had better resume the examination. The committee will be in order, and will continue the examination of Mr. Lincoln. Mr. Lincoln, will you proceed?

Mr. LINCOLN. The topic which I wish to present to the committee is one that is rather general in its character, and it appears rather generally through the proposed amendments to the interstate-commerce act, both in connection with the establishment of joint rates and with respect to the amending of the present section 15.

Present section 15 in the act does not deal with sufficient explicitness with reference to the commissioners' jurisdiction over classification, and the proposed amending of section 15, as in this proposed amendment to the act, covers the point. I want to bring out in my discussion of the subject why the classification should be covered as it is proposed in this amendment. You will notice that the classification is dealt with in connection with rates, rules, and regulations, throughout all the subjects wherein rates, rules, and regulations are referred to.

The foundation upon which our system of rates rests is the classification of freight. By means of the classification is apportioned the relation which each article bears toward the whole in contributing to the carriers their revenue. Uniformity in classification as to description of commodities, manner of packing, and minimum weights and rules applicable in connection therewith is admitted by all to be most desirable. As to uniform ratings, that is a question which should be left for future consideration. No one can tell whether uniform ratings are desirable until he has practical application of rates or schedules of rates to be applied. Many changes in rates and many special privileges are hidden away in a classification. It is essentially desirable that unity of practice may obtain and uniform methods be employed, that the commission should have the power to hear and determine complaints against the classification, and that there should be some body with power to enforce uniformity in classification or such changes as should be made therein after it is once established.

We hear that the multiplicity of classifications which existed prior to the interstate-commerce act have been reduced to practically three. Is this a fact? No. In the Official Classification, but more particularly in the Southern and Western classifications, exceptions are made to the classification, and to such an extent that the original can hardly be recognized. These exceptions are due to the whim or caprice of a railroad or group of railroads as dissenting from the

opinion of that general body making up the classification in its entirety. True, they grow out of local or territorial conditions, but if there is any reason why the classification should be departed from, it should be by the use of commodity rates, local in their application, and not by classification exceptions to the classification.

Where large numbers of exceptions are made, as exist in some territories, so that only a small volume of traffic moves under classification rates, it is almost direct evidence that the class rates applicable in connection with the classification proper are too high in themselves, so that the difficulty is not really with the classification of the article but with the rate schedule.

While we believe that the initiative in making up the classification should rest with committees, as is now the practice, there must be some restrictive power vested with the commission by which the work of the general classification committees may be properly supervised that their labors may not be vitiated by the act of a single carrier or group of carriers changing the classification at will; this is not, however, to restrict any individual carrier or group of carriers from taking an article from the classification and giving it the benefit of a commodity rate.

I make these remarks as showing the necessity of giving the commission supervision (not in the initiative, but supervision as contemplated in the proposed amendment; they have initiative under certain conditions, and then there can be a hearing) over the classification which was not distinctly set forth in the preceding act, the act of which this is supposed to be an amendment.

The commission is, I will say, working with the railroads to the end of uniformity and simplicity of classification. The railroads themselves are engaged upon that task, and at the present time are seeking a uniform description of the articles, a uniform method of packing, and uniform minimums, so that an axe is known as an axe anywhere over the country, and a bureau is known as a bureau, and not as a piece of furniture in one place and a dresser in another place, but as a bureau. We are trying to get that simplicity, that uniform description of the commodity, so that it will be known wherever it may be transported in the United States. We are working to that end. We are not willing, under existing conditions, or at present, to suggest uniform classifications as to a uniform number of classes, and uniform ratings, because that can only be determined when we know what the rate schedule is that goes with the rate.

Mr. ESCH. Why should the rates in the Official Classification territory north of the Ohio and east of the Mississippi have a more binding effect upon the carriers within that territory than the rates in the Southern Classification territory have upon the railroads in that territory?

Mr. LINCOLN. I do not get the point of the question.

Mr. ESCH. You say exceptions have been filed to the classifications made in the Southern Classification territory?

Mr. LINCOLN. In the several territories.

Mr. ESCH. And in the Western?

Mr. LINCOLN. And in the official as well; but not as many of them in the official.

Mr. ESCH. So that a great deal of freight travels by those amendments really to the classified schedules. I ask why there should be

a more binding effect to the rates in the Official Classification territory than in the other two jurisdictions. Are there a less number of railroads in the Official Classification territory?

Mr. LINCOLN. No.

Mr. ESCH. Is that the reason?

Mr. LINCOLN. I think possibly they have dealt with classification longer, and that it is more mathematically correct in the Official Classification territory than in the other territories, and that they have adjusted their scale of rates. Take the scale of rates in the Official Classification territory, and they are lower than they are in either the Southern or the Western—the entire scale of rates—so that they are able to handle their traffic more generally under the classification rates themselves, without many exceptions thereto.

Mr. STEVENS. Due to the state of development of the country?

Mr. LINCOLN. Due to the state of development of the country. As to the Southern Classification territory, in my judgment instead of trying to harmonize their classification to meet conditions, individual lines have made exceptions to the classifications. Part of those are due to water competition, or alleged water competition—water competition when it did exist making a different condition in that territory from that which obtained in the Official Classification territory. That is my observation generally. Their scale of first-class rates per 100 miles is higher in the southern than in the Official Classification territory. It is higher in the Western territory than in the official territory. So there is a temptation with a higher scale of rates to always take care of a change by an exception to the classification. We do not wish to restrict the carriers from applying the lower rate, but do not confuse the situation by an exception to the classification, but make the rate by a commodity rate where it is essential to make it.

Mr. ESCH. Will not the result be to increase the rates in the Southern territory?

Mr. LINCOLN. I do not think so. It will have the tendency of reducing it—not now, but ultimately. You have to make the first step from the uniform classification, and it has to be followed up successively, as the railroad business is. It is a matter of evolution. You can not make any change whatsoever that is radical in its nature but what will affect commerce. All our transportation and all our progress is by evolution, step by step. It must be that way. If we make any radical changes we are going to affect commerce unquestionably. It throws your adjustments and your relations out of line.

I believe that ultimately we will reach a more uniform method of classification than that which exists to-day, and one that will enable a man in one territory to be able to determine what his rating is in another territory. To-day we can not tell it very well. They are not described alike. I have found some cases where, under the Official Classification, freight will be received only under a certain method of packing, and when you get in another territory it will not be received under that method of packing. A man has to pack his freight according to the territory his business is going to. That should not be. If we have a shipment to go from New York to Atlanta, we should be able to send it there under the same conditions under which we send from New York to Denver; but to-day you have to pay regard to the classification and to the manner of packing or you may

have to pay a higher rate by reason of the packing in one territory being different from that used in another territory.

I only refer to the classification because this act goes farther than the previous act, and covers the classification; and I think it covers it sufficiently at this time to meet the requirements of the public. I do not think the classification should be fixed arbitrarily by statute. It must be a matter of evolution, originating with the railroads. The commission are directing their efforts all the time to bringing about that simplicity which is so essential and so much required.

If there are no further questions upon that point, I want to—

Mr. STAFFORD. Will you kindly elaborate the difficulties of having the same system of classification throughout the country.

Mr. LINCOLN. I would state that in this way: I probably have some different views, personally, from those of some of my colleagues in that respect. I think it is possible to have a uniform classification as to descriptions and ratings throughout the country, and an equal number of classes, but it would not be possible to adopt those uniform ratings with the existing schedule of rates because they are so opposed to each other. And any uniform classification making a rate and setting forth in each of the territories the particular class rate to be applied, is bound to result in advances and reductions. Naturally in bringing about uniformity between the three different ratings if you adopt the lowest one there is going to be a reduction from two. If you adopt the medium one there is bound to be a reduction in one case, and an increase in the other. If you adopt the highest one, there is going to be an advance of the two others.

Mr. STAFFORD. You think there should be a uniform classification, and still varying rates charged in different sections of the country?

Mr. LINCOLN. Oh, yes; there should be a varying scale of rates; but now we have a box of hardware, I may say, which may be rated fifth class in one territory, and third class in another territory, and fourth class in another territory. If you are going to get uniformity, which are you going to adopt?

Mr. STAFFORD. Is there any reason, because of climatic or economic conditions, why there should be that difference in classification?

Mr. LINCOLN. There are some exceptions to the rule. I do not think, in general business, it is necessary to have a different rating in one territory from another; but take the case of cotton. You can appreciate that cotton ought to be of a different classification or different rate basis in Texas from what it would be in Dakota; but in that case I say that the cotton movement should be eliminated from the classification and handled under a commodity rate in that territory. Take the case of grain. There ought to be a different scale of rates on grain in the grain-producing territory from what there would be in the New England States. Take the case of oranges. Certainly we ought to have a higher scale of rates on oranges moving locally, we will say, between points in Dakota, than where they are grown and moved in very large quantities, as in Florida and California.

Those things would have to be taken into consideration, and they should be taken into consideration by way of an exception to the classification, as a commodity rate. That is my judgment.

Mr. KENNEDY. Is not this classification resorted to to carry practically the same kind of traffic at different rates through the same territory by putting them in different classes?

Mr. LINCOLN. The same kind?

Mr. KENNEDY. Approximately the same kind.

Mr. LINCOLN. A different commodity, but approximately the same kind?

Mr. KENNEDY. Yes.

Mr. LINCOLN. For the same general use?

Mr. KENNEDY. Yes.

Mr. LINCOLN. Some are put in the general classification—for example, at the fourth class—while others may be in another rating at third class. Those changes in classification are brought about by the kind of arguments that men may present to the classification committee. One man may present his case a little bit better than another, just the same as one lawyer may be more successful than another in pleading, and get what he wants while another does not.

Mr. STEVENS. By changing from one classification to another you actually affect the rate, do you not; you change the rate?

Mr. LINCOLN. Yes, sir.

I want to refer on page 18 to the paragraph commencing with line 10 and ending with line 23. I wish to address myself particularly in this connection to lines 20 to 23. As I understand that paragraph, it makes an exception. I will read the paragraph to get it in the record. I want to speak with reference to the following:

The commission shall not, however, establish any through route, classification, or rate between street, suburban, or interurban electric passenger railways and railroads of a different character.

There is no desire to establish joint rates between the common carriers, ordinarily termed steam railroads, although such roads need not necessarily have steam power, and street or suburban railroads. But included here is the term "or interurban electric passenger railways."

There is no desire on the part of the shippers that the commission should establish joint rates with the average interurban passenger railways. They handle, as a rule, merely a passenger business, running usually to a certain city or community for the purpose of getting the people to and from the city; but I have in mind, and I have direct knowledge of these facts, that there are quite a number of interurban railways in Iowa (one road called the Interurban Railroad, and others called Fort Dodge, Des Moines and Iowa Falls, and other names that they may have adopted) that are purely common carriers. Their power is electric power, but they are handling passengers and freight. I should say that those Iowa lines are handling considerable freight.

Is it proposed to except from the application of this rule the power of the commission, and when there is a community that wants to be served with joint rates and through routes in connection with one of these common carriers doing a freight business, to say that the commission can not establish joint rates with those lines?

Mr. TOWNSEND. In connection with steam roads?

Mr. LINCOLN. In connection with steam roads.

Mr. TOWNSEND. Your proposition is that the commission should have the power to establish through rates over steam and electric lines jointly?

Mr. LINCOLN. As to freight.

Mr. TOWNSEND. As to freight?

Mr. LINCOLN. Yes, sir; as to freight.

Mr. TOWNSEND. Do you know of any companies which are doing that?

Mr. LINCOLN. Doing what?

Mr. TOWNSEND. Is it possible to ship freight under existing conditions directly over a steam road and then connect with an electric line and send it on to its destination?

Mr. LINCOLN. There are about six lines that I know of in Iowa where we have joint through rates.

Mr. TOWNSEND. Do they interchange cars?

Mr. LINCOLN. They interchange cars, and make connections with each other, and the cars run through. They interchange freight equipment with each other. They handle a great deal of hay, they handle a great deal of grain, they handle a great deal of merchandise in connection with those lines in Iowa. If that were left in there, and one of these electric passenger railways, although it handles freight as well as passengers, was exempted under this clause, you could not establish joint rates with those lines, and the railroads would be in the position of saying that we would not establish joint rates, although their equipment is all of the same character as that of the other lines, and complies with all the Master Car Builders' Rules. I will say that in that territory, by reason of these electric lines reaching so many common points with the rail lines, the rail lines have established joint rates with them. They did it as a matter of getting competitive business. If that road went out into a territory where there was no competition, they might not have established joint rates.

Mr. TOWNSEND. How do the interurban freight rates compare with the rates on the steam roads?

Mr. LINCOLN. They are the same. The junction point is the measure of the rate. They establish a joint rate, adopting the same rate that is in effect on the railroads. Locally, they have their own local rates. I understand that in Iowa the rates charged are the same as the Iowa Commissioners' rates. I do not say that as a fact, but that is as I understand it.

Mr. TOWNSEND. I would say that in the discussion of this matter last summer it was thought that the words "passenger railways" would apply to passengers only, and although there was some doubt about any joint traffic rates, there was no example brought up there that they would exchange freight and passenger cars from one system to another.

Mr. LINCOLN. Well, they are doing it. It is common practice to put in those joint rates, and a road which does not serve the territory joins with the electric lines in establishing rates.

Take the Illinois Traction Company. I believe they now have fully 300 miles of road in Illinois. They have joint rates, I know, with the C. and I., the Illinois Central, and the Rock Island, from Chicago to other points, but we feel that if they are common carriers, which they are, you have jurisdiction over those lines. They are carrying freight, and their equipment comes within the rules and is subject to the same rules as to appliances as the regular steam transportation lines, under the safety appliance law. You know the safety appliance act. They have to comply with it in freight equipment, just as the railroad does. There should be a free interchange

of cars if there is a necessity for the joint route and through rates. I interpreted it, when I first saw it, to mean that the interurban electric passenger railroads, in making the exception of them, referred to passenger-carrying lines only, and contemplated lines somewhat similar to those we have at St. Louis, such as the St. Louis and Suburban Railroad, and the St. Louis and Kirksville Railway, which do merely a passenger business, and handle people from the city into the suburbs there.

Mr. TOWNSEND. How do the passenger rates compare?

Mr. LINCOLN. Their passenger rates are lower than the rail rates for long hauls. They have a 5 cent fare usually made up in blocks of 5 cents. You pay from St. Louis, going to St. Charles, Mo., two 5-cent fares. At the junction point where they have a dividing line there is a second fare collected. Of course on the long hauls their rates are less than those of the railroads. On a short haul, at a 5-cent fare, it would be higher than that of the railroads. It is 5 cents for one block or 5 miles. I think it is a very proper exception as to establishing joint rates with lines of that character in the handling of passengers, but as to the handling of freight, it seems to me an exception should not be made.

Mr. STAFFORD. Particularly in view of the tendency of certain railroads which have a large passenger traffic to electrify their railroads, as for instance, the Long Island Railroad.

Mr. LINCOLN. I think electricity is coming to be a power in the handling of freight. We are aiming to construct a line from St. Louis to Kansas City.

Mr. TOWNSEND. You do not understand this to apply to the steam railroad, the ordinary railroad, that has electrified its line, do you?

Mr. LINCOLN. I want what I mean made clear. I was not impressed with the idea that there was any question about it, but the question having been raised, let us make it clear as to what the laws are. There should be no necessity of going to a court to get an interpretation. Let the law be so plain that it will speak for itself.

Mr. TOWNSEND. My understanding was that this exception applied to a different class of railroads and that that class would not be changed by electrifying an ordinary steam railway, and that it would not be brought within the excepted class by doing that; but your suggestions have created some doubt in my mind as to whether this provision here would not prohibit the commission from establishing through routes in matters of freight between the steam road, whether electrified or otherwise, and the ordinary street urban or interurban railway.

Mr. LINCOLN. That is what I am afraid it might do. I want to clear that up. Of course you can not run an electric engine over steam railroad tracks, but the equipment which is attached to the engine can go anywhere, because it is all similar.

Mr. TOWNSEND. I did not know that.

Mr. LINCOLN. The equipment of these lines reaching into common carrier business and handling freight is the same as that of the steam carrier.

Mr. ESCH. It seems to me that the insertion of those words in that section must have resulted from a failure to apprehend the enormous extent of the electric lines in the United States.

There are 38,000 miles of electric lines, and their stock and bond issues amount to about \$4,000,000,000, and they are growing at a rapid pace. They are bound to grow. If this remains in the bill, do we not by reason of that fact practically exclude these electric lines from the operation of the other provisions for through rates?

Mr. LINCOLN. I think you do.

Mr. ESCH. Why should we thus "hamstring" ourselves by such a proviso?

Mr. LINCOLN. It would seem to me, as I view the matter, that that clause is in connection with the establishment of joint rates, joint fares, and classification. It seems to me it could be very properly eliminated. The commission is not going to establish joint rates between a street-car line and any rail carrier, or one of these interurban lines and a rail carrier. They are not accommodated to handle each other's business, freight and baggage, and we would rely upon the discretion of the commission not to do an unreasonable act, under the privilege of establishing joint rates. The necessity must be shown, and it must be shown that it is a reasonable proposition and within the law, in order to establish those joint rates. If you strike out that clause entirely I do not think the commission would ever establish any joint rate with a street-car line, urban or interurban line. I do not think it has any effect in the paragraph, except possibly to let some one escape establishing a joint rate. I think it should be eliminated, and left to the commission. There is another paragraph which I will not speak upon at this time, as I wish to get through with the league proposition. I think it is on page 26.

Mr. TOWNSEND. Yes; the last proviso.

Mr. LINCOLN. It is possible that there is a very proper exception made there. I want to speak of that separately; but I do not believe that that paragraph belongs with the joint rate proposition. I think it could be eliminated absolutely from that section and do no one harm; and leave it to the commission, if the facts are shown and they are justified in it, to establish the joint rate. That would be my suggestion, to eliminate the entire section from that paragraph.

Mr. ESCH. And also section 12 of the bill—

Mr. LINCOLN. I will have to speak of that separately. That is another paragraph that I wish to speak of individually. In presenting my views on these subjects that I have been discussing, I have been speaking for the organization of shippers. I am going to ask the privilege of speaking individually upon the commerce court and the issuing of stocks and bonds and other features, but not as a matter indorsed by the league. These propositions that I have been discussing have the indorsement of this great organization of shippers. On the other questions, as representing the Merchants Exchange of St. Louis and in my individual capacity, I want to make some remarks. I am trying to confine myself to the questions acted upon, and you notice that they all deal with classification, rather than with the finances or the court.

I would therefore suggest, for the purpose of getting it in the record, the elimination of the words—

The commission shall not, however, establish any through route, classification, or rate between street, suburban, or interurban electric passenger railways and railroads of a different character.

I suggest that those words be eliminated from that section, lines 20 to 23, page 18, of the bill.

Before concluding, I would like to file with the committee resolutions bearing directly upon most of the subjects I have discussed. I have them in my files. Do you wish to have that character of testimony?

Mr. STEVENS. Just leave it with the stenographer.

Mr. LINCOLN. I presume you gentlemen do not wish to have them read, do you?

Mr. STEVENS. No; leave them with the stenographer. Is it your purpose to introduce many of them to be printed? The only point is that it is cumulative, and cumbers the record to no good purpose.

Mr. TOWNSEND. Is there any exception as to what they are setting forth? Are they all indorsing the cause you stand for?

Mr. LINCOLN. Yes.

Mr. ADAMSON. I suggested to him yesterday that he classify those and give the clerk a list of them, after stating what the substance is.

Mr. STEVENS. We want everything in the record that should be there. At the same time we do not wish to make the record too extensive by the introduction of cumulative evidence.

Mr. ADAMSON. You get the benefit of all of them by giving the names of the writers, after giving the substance of one.

Mr. STEVENS. These are all similar.

Mr. ADAMSON. If you put one in the record and give the names of all the signers, you have all you need in the record.

Mr. LINCOLN. Then I will draw up something stating the different organizations which have endorsed resolutions "substantially in accord with the above."

Mr. STEVENS. Very well.

Mr. LINCOLN. And then I will file it, if you think your committee would like to have it.

Mr. ADAMSON. We want to give you the benefit of all your evidence.

Mr. LINCOLN. I can prepare it and file it in that way.

Mr. STEVENS. Very well; that may be done.

Mr. LINCOLN. I can give you the text of the resolutions adopted, which relate to these four propositions, and the parties who have filed resolutions in support thereof. They do not all use the same language.

Mr. STEVENS. You can file the resolutions also.

Mr. LINCOLN. I will file the resolutions, but the other can go into the record, as substantially representing the resolutions, with the names of the parties.

Mr. STEVENS. Yes.

Mr. LINCOLN. That would put it before you, without burdening the record, but evidence of all of the resolutions can be filed with you. Will that be satisfactory?

Mr. STEVENS. Yes, sir.

Mr. LINCOLN. I will prepare it in that way, then.

I will state, gentlemen, that I have concluded my remarks, speaking in a general way, for the body of shippers I represent; but I would like to say that in covering so much ground I may have overlooked something. I hope I have not.

I would like to call upon the gentlemen present with me for just a brief statement, so that they can appear in the record. I will introduce first Mr. Sproull, general freight agent of the Cambria Steel Company, of Johnstown, Pa.

STATEMENT OF MR. WILLIAM A. SPROULL, GENERAL FREIGHT AGENT, CAMBRIA STEEL COMPANY, JOHNSTOWN, PA.

Mr. SPROULL. Gentlemen, there are just a few points that I would like to touch on very briefly. There has been a great deal of surprise and wonder expressed by some members of the committee that the transportation companies can not and do not compile their tariffs so that they can be readily comprehended by even the most inexperienced; and I must confess that it is a hard matter to explain this to a person who is not familiar with and does not understand the varied and complex ramifications that enter into the construction of freight tariffs. The purely local tariff is a comparatively easy one to compile, but in the construction of joint through tariffs consideration has to be given to geographical position, commercial conditions, the character of the commodity, and the junction points through which the traffic is to move, the relation of rates to other territories, etc.

So you can see from this that it is no child's play, but requires expert and very careful work.

Now, when it comes to determining what a rate is on a given commodity, and in order to secure the lowest and best rate and route one may have to consult all-rail tariffs through different junction points, a rail and lake tariff, or a tariff via rail and the seaboard ports. If a shipper in Pittsburgh wants a rate to a point in the south he will have to consult tariffs applying via Cincinnati and via the Virginia gateways, because to some points the rates are the same and to others they are different. If a concern is located east of a point 40 miles east of Pittsburgh, in what is called the seaboard territory, and he wants to ship to a point in Texas, he must consult a tariff applying via a seaboard port and then see whether or not the combination of all-rail routes via St. Louis, Memphis, or some other point will make a lower through rate, because from the seaboard territory the all-rail lines do not publish joint through rates. Shipments made all-rail from most seaboard territory have got to be made on a combination of locals.

If the same shipper wants a rate to a southern point east of the Mississippi River and south of the Ohio River, he has to determine the location of the point in its relation to a line drawn from Cincinnati to New Orleans through Montgomery, because to points east of that line he can not ship via Cincinnati; and then in determining that he has to consult his various tariffs.

Mr. STAFFORD. Why can he not ship to those points via Cincinnati?

Mr. SPROULL. Because under an agreement between the southern lines traffic from a point east of the Pittsburgh territory moves to points east of this line drawn from Cincinnati to New Orleans, via the Cincinnati gateway.

Mr. STAFFORD. It is an arbitrary agreement on the part of the railroads?

Mr. SPROULL. It is an arbitrary agreement on the part of the railroads; and one by which I do not know that any shipper is damaged.

Mr. STAFFORD. What is the purpose of that agreement?

Mr. SPROULL. I think it is probably to divide the tonnage and insure to the lines operating via the Virginia gateways the tonnage originating at points east of Pittsburgh territory.

What I say in regard to the difficulties of a shipper in determining a rate applies with equal force to a railroad agent.

Mr. STAFFORD. Pardon me; but are you acquainted with any other similar arbitrary division of traffic territory?

Mr. SPROULL. There is an arbitrary division of traffic territory between the water lines and the all-rail lines operating into the Southwest and into Texas.

Rates are supposed to be, and generally are, the same between given points via the various routes having through joint rates, but the fact is that they are not always the same because different roads and routes may not issue their tariffs or amendments simultaneously. To err is human, and without going further into this matter, I think you will see why mistakes are liable to occur. I have been connected with traffic matters for thirty years, but I would not attempt to quote a rate from the tariffs on file in my office. I have to have an expert tariff clerk who does nothing else but handle tariffs and check up the supplements and amendments, which are received every day, and when I want a rate I have to go to him for it. Let me give you two illustrations.

We were bidding on some rails to go to Whittier, N. C. We asked the representative in Pittsburg of the Southern Railway for a rate from Johnstown to that point. I think we telegraphed him for it. He telegraphed the rate, confirming it by letter. The rate was quoted in connection with the Baltimore and Ohio road and the Southern Railroad. I did not have in my office a tariff applying in connection with the Baltimore and Ohio and Southern Railway, but we did have a tariff applying in connection with the Pennsylvania Railroad and the Southern Railway operating what is called the "Eastern and Southern Dispatch." We referred to that tariff and confirmed the rate that Mr. Templeton quoted. We sold the rails delivered at Whittier, N. C., based on that rate. Before the rails were shipped, however, we had a notice from Mr. Templeton that the rate had been quoted in error. It seems that there had been an amendment or a supplement to the tariff advancing that rate almost \$2 a ton, and he had failed to get the supplement, through possibly an error on the part of a mailing clerk in the general office, and we had not received the supplement issued by the Eastern and Southern Dispatch.

You can readily see how that mistake occurred, but we had to hold the "hot end of the poker," and we stood a loss of about \$1,400 or \$1,500 on that shipment, whereas if we had been quoted the correct rate we probably would have sold the rails on the correct rate and would not have been out that amount of money. But there is no recourse. The commission can not authorize the Southern Railway to refund to us that amount, because by so doing they would recognize a rate that was not a legal rate at the time the shipment went forward.

Another instance, to show you how mistakes will happen. I asked a number of roads, a number of carriers, transporation companies, for a rate on 3,000 tons of rails going to a point in Texas. The Southern Pacific quoted me a rate that was about \$2 a ton less than the rate quoted by any of the other lines. I went back at them in writing and told them this rate was so much less than the rate which I had received from other lines that I doubted very much whether it was correct, and asked them to look it up and confirm it.

They came back at me in writing and confirmed their quotation. As a matter of precaution, I went back at the lines quoting the higher rate, and I stated to them that the rate they quoted was so much higher than that of some other lines that I thought I would like to have them revise it, and if it was correct to confirm it. I wrote that to the lines quoting the higher rates. They came back and confirmed it. I then went back at the Southern Pacific and said, "I want to see the tariff which provides for the rate which you have quoted." They came back at me a third time and confirmed the rate in writing and sent me a copy of the tariff to prove their confirmation.

When I took the tariff and looked at it, the first thing that met my eye was a note at the top of the page which said, "These rates do not apply to points on Missouri, Kansas and Texas between A. and Z." This point was between those two points, on the Missouri, Kansas and Texas, and took an arbitrary over and above the Texas common point rate. Yet they had overlooked that three different times in quoting me that rate. If I had not been particularly careful to make sure as to the correctness of their rate, and if we had gone ahead and sold the rails, based on their quotation, we would have been out \$6,000. Those mistakes are bound to happen. It is hard to get away from them.

There is another point. I believe there should be a limitation as to time in quoting rates not only to shippers but to connecting lines by one carrier to another carrier. For instance, we might want to know what the rate is to a point in New England that is located on a small road. There probably will not be any joint through rate to the local points on this short line, but we ask the Pennsylvania or the Baltimore and Ohio road for a rate to this point, because we must know the rate in order to sell material or prepay freight, and they telegraph to the general office of this little road. They probably handle their matters in an indifferent kind of a way, and sometimes it may be a week or ten days, and they may send half a dozen telegrams to this road before they can get any reply to it. I think it is particularly important that there should be a limitation placed on that. In the meantime we are held up, and it is not the fault of the initial line.

Mr. ESCH. The bill says "within a reasonable time."

Mr. SPROULL. Then you have to determine what is a reasonable time?

Mr. ESCH. What would you substitute for that?

Mr. SPROULL. I should certainly say that seventy-two hours was a reasonable time for a proposition of that kind.

Mr. ESCH. Mr. Lincoln, I think, suggested forty-eight hours.

Mr. SPROULL. When I say seventy-two hours I am giving them all the leeway they can ask or expect.

Mr. STAFFORD. Do I understand you now as advocating a limitation on the time when this quoted rate shall be available to the shipper?

Mr. SPROULL. No, sir; the limitation as to the time which a railroad company can take to quote you a rate which they have on file.

Mr. STAFFORD. As I understand it, the shipper is seeking to get a price from the railroad company for his commodity, which is transportation. Under ordinary contracts, the person to whom an offer

is made must accept it before there is a contract. Is it fair to allow that quoted rate to stand indefinitely.

Mr. SPROULL. That quoted rate is probably, in a case of this kind, a tariff rate which may have been in force for years. They very seldom change those things.

Mr. STAFFORD. But suppose the railroad should make a change in its tables, in its tariffs?

Mr. SPROULL. They very often say "This rate will be good when accepted;" so it is up to us to notify them when we are going to use it.

Mr. STAFFORD. That is the point.

Mr. SPROULL. Very often it will be quoted "Subject to acceptance," and then it is up to us, if we want to use the rate, to notify them.

Mr. TOWNSEND. With reference to that "reasonable time" you say seventy-two hours; Mr. Lincoln thinks forty-eight hours is sufficient. Suppose it is on a combination rate that you are going to ship instead of a joint rate.

Mr. SPROULL. Yes; that was the case in these instances I have cited.

Mr. TOWNSEND. It was?

Mr. SPROULL. Yes.

Mr. TOWNSEND. Let us assume this case: You start your shipment over the initial carrier's road, but it connects with some other road 2,000 miles away, where you make the rest of the shipment. You have to get word to the agent of the carrier on that second road. You have to submit it in writing, and you can not do it faster than the cars can go, or the mail can be carried there and back. Is it not possible to conceive of a case where in demanding a rate of one of the carriers the agent would be so far away that he could not get the information to you within the forty-eight hours or the seventy-two hours even?

Mr. SPROULL. Hardly, if we used the telegraph.

Mr. TOWNSEND. But you are to submit it in writing. The law provides that you must make the request in writing and that the answer must come back in writing.

Mr. SPROULL. If the road is out in Montana or Idaho or Wyoming, and it has to be done by mail, in that event, of course, seventy-two hours would not be sufficient to do it in. If there was any urgency in regard to it, it could be handled by wire. We would notify the initial line that we had accepted the through rate which they quoted. We would not notify the connecting line.

Mr. TOWNSEND. I will say that I have talked to a good many shippers and a good many railroad men, railroad men who are not opposed to this provision, but they all feel that that proposition of "reasonable time" might be important. I can see myself that it would be a very important thing in some cases, and it would be difficult to fix an arbitrary period in which this notice should be given and received.

Mr. SPROULL. I can see that there might be exceptional cases; but I am speaking in a general way.

Mr. ESCH. The difficulty would be in founding a criminal proceeding upon what could be done in a "reasonable time."

Mr. SPROULL. Well, it was not my idea that there would be any penalty attached to that. It would simply be a misdemeanor—that they would be expected to do this. I do not know that I would favor a penalty on a slip-up in a case of that kind.

Mr. TOWNSEND. It had not occurred to me that there could be any serious objection to that.

Mr. SPROULL. I should let it stand at a "reasonable time."

Mr. TOWNSEND. If the roads adopted this proposition, as I believe they will if this becomes a law, I think the commission would not exact any unreasonable terms. It is simply establishing a condition which all parties would observe, as it seems to me.

Mr. SPROULL. It is possible that it would work out that way.

Mr. TOWNSEND. I have no objection to fixing a time if we can absolutely do it without any injustice to the carrier.

Mr. SPROULL. Possibly if we should attempt to fix an arbitrary time there might be an injustice done.

Mr. ADAMSON. I think the word "reasonable" or its equivalent has been in the laws about as long as we have had laws, and that is over one thousand years, and the courts have not had any trouble in construing or understanding the term. I understand that you do not want to put a man in jail, but you want to make him pay a pecuniary penalty if he fails to do this within a reasonable time?

Mr. SPROULL. We simply want some action that would draw the attention of these smaller lines to the fact that this condition has been recognized by the commission, and that they should be a little more active in attending to their business. That is what it amounts to.

Mr. TOWNSEND. As I understand it, that is all the shippers are asking for.

Mr. SPROULL. Yes. The question was raised yesterday as to the possibility of carriers, in response to a request for a written quotation, supplying tariffs to a shipper to determine a rate. This is a difficulty that need not be considered, if for no other reason than that the carriers could not stand the expense of such a policy, of furnishing tariffs every time they were asked for a rate on a specific shipment.

Another matter that was brought up yesterday was the right of a common carrier to route a shipment on which the shipper failed to specify the rate or the route, or both. My personal opinion is that where these matters are not of enough importance to the shipper to impel him to so specify, that the carrier should have the option as to the route, and the carrier would in 99 cases out of 100 select the cheapest route. Such cases, however, are so rare that they need not be seriously considered, I think.

One other matter. My personal opinion is that the filing of tariffs in freight stations places a burden and expense on the railroads without any compensating feature whatever, either to the public or to the carrier.

Mr. ESCH. If we provide that the shipper can demand a rate, would there be any necessity for having the railroads file all the schedules in the freight stations?

Mr. SPROULL. I do not think so. They are no good as they are and never will be, because no ordinary shipper can go in and determine from the tariffs on file what the rate is.

Mr. ESCH. But they have to have them for the information of the agent himself?

Mr. SPROULL. He has to have them. I am speaking about the tariffs on file for the benefit of the public. The copy that the agent has consists of a tariff with all the amendments and supplements checked right up to date, or it is supposed to if he is an up-to-date agent; but

as to the tariffs in many cases that are kept on file for the public, the amendments and supplements are just stuck in, and it would be impossible to get an accurate idea about them.

Mr. ADAMSON. You do not mean to say that the agent keeps them in that form; but that he is more careful about it?

Mr. SPROULL. He is more careful about it; but he has to have his information in good shape. The amendments or supplements to the tariff are of very little use unless you take the amendments and supplements and correct the body of the tariff to make it correspond with the supplements and amendments that are issued, if you want to handle it explicitly and intelligently.

Mr. ADAMSON. The great trouble that I have had about that is this. I have seen a great many local agents all over the country, and I have not seen any of them who were any more intelligent than you gentlemen who appear here for the traffic people. I understand your explanation of why it is difficult for you and your clerk to understand these things, but you have not explained to me how any poor ignorant devil in a railroad office can figure it out any better than you can.

Mr. SPROULL. I said that what I have said about myself and the other shippers would apply equally to the railroad agents.

Mr. ADAMSON. I can not understand why these people, these things having been published for the public benefit, can not take them and study them out as well as the remote railroad agents.

Mr. SPROULL. They can study them out; but I say that with the best of intentions there are bound to be mistakes occur.

Mr. STAFFORD. Have the railroad systems to-day in their employ any men whose specialty it is to give out public quotations on through rates?

Mr. SPROULL. Yes, sir; in the general offices of most railroads there are men who handle rates exclusively, and whose duties are subdivided. A certain man will handle the eastbound rates and a certain man will handle the westbound rates. It may be that in the case of a traffic line tariff where the movement of iron and steel articles is very heavy a certain clerk handles the iron and steel rates exclusively.

Mr. STAFFORD. Would it require the employment of an additional supervisory force to furnish this character of information on application if we should carry it into law?

Mr. SPROULL. I do not think it would. They are generally pretty well equipped now. There is one other matter that I want to speak about (and I speak for the Cambria Steel Company, but what I say has equal force in connection with the other iron and steel interests), and that is the right to route freight. I think probably I can cover this matter better if I just read a letter which I wrote on this subject some time ago (reading):

Commissioner Charles A. Prouty, in a letter addressed to Mr. George F. McKay, traffic manager of the Lackawanna Steel Company, under date of March 22, 1908, in regard to this matter wrote as follows:

"The only way to reach the object you desire is by legislation which shall either require the railroads to extend to the shipper the right of routing or shall invest this commission with authority to decide in what cases that right may be exercised by the shipper and in what cases reserved by the railway. Ordinarily, the intermediate routing is of no consequence to the shipper, and in such cases there is no reason why the railway should not send the traffic by whatever route it desires. There are instances, however, in which it is of importance to the shipper to direct the entire route over which the traffic shall move, and in these cases he should have the right."

My own opinion is, and I think it will be concurred in by every shipper in the country, that the shipper should have the right unreservedly to route his shipments from point of origin to destination, provided, of course, that the route is over lines which are parties to the freight tariff publishing the rate under which the traffic moves. If this very important factor in transportation and commerce is made the subject of appeal to, and hearing by, the Interstate Commerce Commission, it means that a serious restriction is being placed on the necessary and prompt methods of business, and that in order to show the necessity for forwarding material via a certain route a shipper would be compelled to give out information as to the volume of business between the shipper and a given railroad, in order to show both the necessity and justice of reciprocity; and as hearings before the commission are public such information would become the property of competitors and other railroads to the detriment of all concerned.

Compelling a shipper to go before the commission and show cause as to why he should have the privilege of routing a certain shipment via a particular road or route would in its practical workings in most cases deprive the shipper of the right, first, because of the delay involved and also because of the hesitancy due to perfectly valid and legitimate business reasons to making public the affairs of his sales department. It is conceded that in many cases neither the intermediate nor terminal routing is of any interest to the shipper, but this condition applies only to manufacturers of and dealers in commodities which are not used or purchased by railroads, and such articles comprise only a small percentage of the volume of the shipments transported by the carriers of this country.

It has been stated by competent authority that of the iron and steel produced in the United States the railroads consume 55 per cent. In considering the reciprocal relations between the iron and steel manufacturers and the railroads, it must not be lost sight of that every ton of finished product involves the movement to the furnaces and plants of 4 tons of raw material. When you consider, first, the percentage of iron and steel production consumed by railroads of this country and, second, the tremendous volume of tonnage controlled by the iron and steel manufacturers, it does not take much of an argument to show that the right to route this tonnage is an asset of inestimable value to the manufacturer.

Any action or policy on the part of the railroads or the commission that would in any way destroy the value of this asset would amount to a confiscation of property rights which it does not seem to me could be defended either in law or equity.

Let me illustrate this point. Suppose we have a large consignment of rails going to St. Paul, Minn., or some point beyond; we would naturally desire to give that tonnage to the road, or roads, between Chicago and St. Paul, who are large customers of ours. Would it be manifestly unfair and unjust for the road carrying the tonnage to Chicago to have the power to disregard our routing instructions, and to turn this tonnage over at Chicago to a road which never purchased any material from us? Such a course would be detrimental to our interests, and an injustice to the road which had been a valued customer of ours.

The right to control and route our tonnage would give the initial lines every opportunity to favor friendly connections, and discriminate against those who were possibly not friendly, regardless of our rights and wishes in the matter, or the obligations which we might be under, on a reciprocity basis, to roads which give us a fair proportion of their orders.

Such a condition could not help but work very great hardships on the smaller railroad systems.

Another phase of this matter is the question of prompt movement of cars. We may, for instance, be making shipments of structural material to San Francisco for a building where the contractors are under forfeit, and it may be a question of very vital importance to have the material move through to destination in the quickest possible time. In order to accomplish this we select the route which we believe will give the best movement, and we then notify the representatives of the various roads over which the freight will move, in order that there may not be any delay, not only in the actual movement of the car, but at junction and transfer points.

It will be readily seen that if the initial line, or any of the intermediate lines, had the right to ignore our instructions in regard to the connection line to which the car was to be delivered, that all our labor and trouble and telegraphing would be in vain.

Very often we are obliged to accept orders, particularly from railroads, contingent on our forwarding material via a route specified by the buyer. If we made an agreement of this kind (and very often we are forced to do so) and did not live up to it, our customer would have the right to refuse the material on its arrival at destination. This would involve us in unnecessary expense and controversy with our customer and with the roads who are responsible for the diversion of the freight, and would therefore be detrimental to the interests of all parties concerned.

These are all vital and important points, but to my mind the most important is the fact that our tonnage and the right to route it is an asset, the value of which can not be adequately estimated, and we have in it a property right which we should not be deprived of or forced to defend in the courts.

There is hardly anything which the railroads use in the shape of steel that we do not manufacture, and as we could not exist without railroad patronage it follows that we should not be deprived of one of the means of securing this patronage.

This same line of argument can apply equally well to manufacturers of cars, locomotives, lumber, electrical machinery, and other commodities used extensively by railroads.

On account of being away from home so much of the time since our meeting in Washington, I have not been able to give the matter attention before, but I trust that what I have written will be of some value to you.

Mr. STEVENS. Can you not conceive that that very privilege might be the best possible basis for rebating?

Mr. SPROULL. No; I can not say that I do. In what way?

Mr. STEVENS. Do you not know that it has been used as a basis for rebating?

Mr. SPROULL. The right to route freight?

Mr. STEVENS. Yes, sir.

Mr. SPROULL. Not under the present law. I know of no rebating.

Mr. STEVENS. Do you not know that it has been charged that the right to route freight has been used as a basis for giving rebates and various discriminations?

Mr. SPROULL. Under the present law?

Mr. STEVENS. Yes.

Mr. SPROULL. No, sir; I do not.

Mr. STEVENS. Can you not conceive that it might be?

Mr. SPROULL. I can not conceive of any railroad that would offer a rebate to-day, or any traffic manager that would be a party to receiving one.

Mr. STEVENS. It could be done indirectly, the same as it is charged now it has been done indirectly in some cases, could it not?

Mr. SPROULL. I know of no such cases, sir; speaking in my own individual capacity. Mr. Lincoln may know of some case that has occurred, but I do not.

Mr. LINCOLN. No; I do not.

Mr. SPROULL. Some of these other gentlemen may be able to verify your information.

Mr. ADAMSON. You expressed a fear just now that the initial line might route the freight over a connection that it liked or refuse to route it over one against which it entertained a dislike, and in the same breath almost you said it was of inestimable value to the shipper to exercise the volition to route his freight because he wanted to ship it over some line that bought goods from him. What is the difference in discrimination? If the shipper can discriminate because a railroad is a customer, can not the railroad just as rightfully discriminate?

Mr. SPROULL. I do not think so. We pay the bill, and we should have the right to route the freight; and as Mr. Lincoln said yesterday, if you take that power away from the shipper and put it into the hands of the railroads, you immediately enable them to create the biggest kind of a pooling system that you ever saw.

Mr. ADAMSON. I am not criticising either one; but I simply want you to help me to understand the difference—how the one partiality is any better or any worse than the other.

Mr. SPROULL. We claim that the tonnage is ours. We pay for the transportation of that tonnage, and should have the right to elect the

route over which the tonnage shall move, provided that route is via a route which is recognized by the initial line, and over which they have through rates.

Mr. STEVENS. Suppose that the right you claim should be used as a device, and discrimination could be practiced and rebates obtained by an improper division of the business, what would you say to that as a property right?

Mr. SPROULL. I can not conceive, as far as we are concerned, how we could use our tonnage to secure any rebate.

Mr. KENNEDY. Suppose you are selling rails to a road that you want to favor. We have no regulation to compel railroads to buy their supplies from the lowest and best bidder, like some other public trustees have to do, but they could make you a more liberal price on your rails if you shipped over their line than if you did not.

Mr. STEVENS. And time of delivery, quality of the rails, and many other things of that kind.

Mr. SPROULL. My experience has been that there are no such practices as that in vogue.

Mr. ADAMSON. It is just a sort of a platonic friendship.

Mr. SPROULL. We have never used the tonnage which we control as a club over the head of any railroad to compel it to grant us any favor in the way of reciprocity.

Mr. STEVENS. Do you state that nobody else ever has?

Mr. SPROULL. No, sir; I do not. I can not be responsible for others.

Mr. STEVENS. You made also the statement that the railroads have demanded that you make a contract to route over their lines or some other line as a part of that contract. Since the decision of the Supreme Court in that orange routing case do you think a provision like that would be valid if the conditions are within the decision in that case?

Mr. SPROULL. The railroad might insist, where it could get a haul out of that shipment, that we route it so that they could haul via the junction point that would pay them the largest revenue rather than by the junction point that would give them a short haul and a small revenue.

Mr. ADAMSON. If they give you the quickest and cheapest service is not that about all you want—if you get the cheapest rate and the quickest service over the road?

Mr. SPROULL. It is not a question of the cheapest rate. The rates as a rule are the same via all the lines. We may be able or may be willing to put up with a little inferior service in order to favor a line that has given us business; and I want to say right here that reciprocity is the basis of business today.

Mr. ADAMSON. The mainspring of your desire to route your goods is to give it to some railroad that is your customer, or that you like?

Mr. SPROULL. Certainly. If there are two lines between given points and one road buys from us, it naturally follows that we would ship our goods via the line that favors us.

Mr. ADAMSON. Of course in the case of a perfectly good and moral man there could be nothing wrong come from that; but bad men might get in a position to use the opportunity to rebate, and get in a position to do something akin to what Mr. Stevens and Mr. Kennedy have been talking about.

Mr. SPROULL. Bad men might disobey any law or regulation if they were inclined to.

Mr. ADAMSON. All the men who run these railroads are human creatures, are they not?

Mr. SPROULL. They are. We all are.

Mr. ESCH. Suppose a railroad company purchases rails of you and asks that you ship over the line of a given carrier, and suppose you wished to favor a road which had favored you, in sending that shipment. How, under the existing law, would you adjust that difference?

Mr. SPROULL. We would favor the railroad that was buying that particular shipment from us, if it had a preference in the matter. If it would give us an order for rails and say that it would like to have them moved via a certain route, the rates being equal, we would give it to them, as business policy.

Mr. ESCH. Notwithstanding that the shipment, so far as you were concerned, went over a road to which you owed no obligation in a business way whatever—an intermediate carrier?

Mr. SPROULL. Yes; because we would possibly in that case have to give some tonnage to a road not purchasing from us in order to satisfy, as a matter of business policy, the road that did.

Mr. STEVENS. Can you not conceive that that sort of policy would give a road which had a large equipment and made large purchases, like the Pennsylvania Railroad, a very great advantage over a road which had not the power to make such purchases?

Mr. SPROULL. No, sir.

Mr. STEVENS. Does not that policy that you advocate strengthen the already strong roads tremendously and decrease the power of the weak roads to get freight?

Mr. SPROULL. No, sir; because we would take care of the weaker roads, if they were purchasing goods from us.

Mr. STEVENS. How could you? If the Pennsylvania system were purchasing a half more tons from you than the weaker system, would you not give the Pennsylvania system the bulk of the shipment?

Mr. SPROULL. If it came to the point of shipping via the Pennsylvania Railway from Chicago or Milwaukee—I will use that as an illustration, because it is a better one—and the Pere Marquette Road had been purchasing goods from us, we would reciprocate with the Pere Marquette, and we would cut the Pennsylvania's haul short by giving it to the Pere Marquette at Chicago, because we could make up to the Pennsylvania Railroad what we owed them in the way of reciprocity by other tonnage.

Mr. ADAMSON. If I understand your answers to Mr. Esch correctly, you think that while discrimination is wrong when it is exercised by the railroad, the initial carrier, yet if the intermediate railroad which they wished to favor happened to be the same one that you wished to favor it would be all right.

Mr. SPROULL. Very often we have to work into each other's hands in that way.

Mr. KENNEDY. Do you not think in the law there ought to be a provision to require manufacturers like your company, that are selling large amounts of supplies to the railroads, to publish the prices at which you sell, so that that would be public information, and the public would know you were not getting favors from the railroad in prices?

Mr. SPROULL. I think as a business proposition you yourself must know that that would hardly be just to anybody.

Mr. ADAMSON. I insist, if that be done, that it be published in plain terms so that we could all read it, and not relegate it to the experts. [Laughter.] That is all I have to say.

Mr. TOWNSEND. Your contention is that inasmuch as the carrier holds itself out to deliver freight from the point of shipment to the destination, and has several connecting lines, that the shipper ought to have the right to select which line he shall take.

Mr. SPROULL. Yes, sir.

Mr. TOWNSEND. And that possibly there might be some favoritism shown by the shipper, as you have suggested—which is the only argument which can be against it in my judgment. On the other hand, the railroad has every opportunity to discriminate in its favor if that right is not granted.

Mr. SPROULL. Yes, sir.

Mr. TOWNSEND. So it is simply a question of what is right for a public-service corporation which holds itself out to do this business. What is it right for it to do with reference to the shipper? That is the question for us to decide.

Mr. SPROULL. As between it and the connecting line and between the shipper and the connecting lines?

Mr. TOWNSEND. That is all I have to ask.

Mr. STEVENS. Is there anything further this afternoon?

Mr. LINCOLN. There are several others who want to be heard.

Mr. STEVENS. They will be heard.

Mr. LINCOLN. Then I will ask Mr. Belleville to address you.

STATEMENT OF MR. J. M. BELLEVILLE, GENERAL FREIGHT AGENT PITTSBURG PLATE GLASS COMPANY, PITTSBURG, PA.

Mr. BELLEVILLE. Mr. Chairman and gentlemen, I followed Mr. Lincoln's testimony very closely. He appeared in behalf of the National Industrial Traffic League, of which I am a member, and all I want to do is to simply indorse everything in his testimony. I am in hearty accord with everything he has presented, as he has presented it. I have not anything to add to it. I think he has covered the ground very fully. I simply want to indorse his testimony.

Mr. TOWNSEND. Have you had any experience with these electric lines?

Mr. BELLEVILLE. No, sir; I have not.

Mr. LINCOLN. I will now ask Mr. O. F. Bell, of the Crane Company, which has branch houses all over the United States, to address you.

STATEMENT OF MR. O. F. BELL.

Mr. BELL. Mr. Chairman and gentlemen, I do not know that I can add anything to what Mr. Lincoln has said to you; but your chairman yesterday at the meeting of the committee referred to a conversation which he had had with the traffic manager of a large concern in Chicago, who told him that he was not able now to control the routing of his freight. I was present at the conversation the chairman referred to and I think he must have misunderstood entirely the statement that was made by the traffic manager, which

he referred to. That traffic manager was connected with the Illinois Steel Company, of Chicago. It is an absolute fact that an institution like the Illinois Steel Company, or the Crane Company, or any other large institution—for instance, the Pittsburgh Plate Glass Company, represented by Mr. Belleville—can control the routing of their freight absolutely, because there is no carrier out of Chicago, Pittsburgh, Bridgeport, Cincinnati, Kansas City, or any other point from which we ship goods who is going to refuse to follow the routing we specify, because they know if they do they will not get any more of our business at that point; that we will give it to some competitive road; and so far as this particular amendment giving the shippers the right to route the freight is concerned, I will say that that is of no particular interest to this company, or hardly any other large shippers in the country.

Mr. KENNEDY. But suppose the case of a shipper located in a city that had but one railroad.

Mr. BELL. That is a different matter entirely. If we had a branch house or had a factory located at a point reached by one railroad only, at a local point, by mere virtue of the fact that we controlled the business from other points the railroad which served that particular point could not afford to disregard our routing, because it would know that if it did, while it might get the business from this local territory and send that anyway it pleased, when it came to soliciting the Crane Company's business from some other point it would not get it.

Mr. ESCH. So that you have your requests granted, not only by reason of the location, but by reason of the amount of business?

Mr. BELL. That is it, exactly. That applies to every large concern in the country.

Mr. STEVENS. How about the small concerns?

Mr. BELL. The amendment suggested is absolutely in the interest of the small manufacturer, or the man located at a local point—not at a competing point—where he is served by one railroad only. I can give you one illustration of how sometimes a road may desire to get a long haul on a shipment. The Crane Company orders, for example, a carload of enameled-iron goods, sanitary ware, from a factory at Sheboygan, to be shipped to its branch at Wichita. Sheboygan is a local branch on the Northwestern Railroad. We say to the shipper, "We want you to route this business via the Chicago and Northwestern and Santa Fe. The Santa Fe gets the business at a junction point in Illinois, the Northwestern getting it only from Sheboygan to this point in Illinois west of Chicago. The Northwestern says to us, "Why don't you route this business via Kansas City, so as to give us the haul, say, out to Des Moines, in connection with the Chicago and Great Western road, or out to Council Bluffs, in connection with a road running from Council Bluffs, so as to give us a long haul up to the Missouri River, if possible?" To favor them and give them a long haul we might route the business that way; but we might have a reason for giving it to the Santa Fe—the reason advanced by Mr. Sproull, perhaps—and for the reason, perhaps, that we were located, or our branch house was located, at Wichita, on the Santa Fe rails, we say: "We don't want you to haul it to Council Bluffs and give it to some road there or to Des Moines, but give it to the Santa Fe, because we must give them that business." There are a good many reasons why certain roads should be favored

other than the purchase of materials. There are service accounts; and a whole lot of the large shippers are in a better position in many cases than the initial road to know what roads will give the best service. It happens frequently.

Here is an instance. I can tell you this. We have a branch house at Los Angeles and we ship from Chicago and all eastern points to Los Angeles in carloads and less quantities; and we divide the business. We aim to give every line we can possibly get to haul that business a share of the traffic. We send some of it via Omaha, or Kansas City, via the Union Pacific to Salt Lake City, and down by San Pedro to the Salt Lake and Los Angeles Railroad. Some of it goes via the Texas Junction points, the Southern Pacific, or via the Santa Fe direct to Los Angeles. Our manager at Los Angeles, in the early part of December, wrote to me:

I think you had better send our business as far as you possibly can via southern routes for the reason that there are apt to be washouts and snow blockades up in the Rocky Mountains, and we do not want our business delayed.

It happened, very singularly, that the general traffic manager of the San Pedro road had written me a letter soliciting a share of the business via Salt Lake City and these roads; but on receipt of this letter from our manager at Los Angeles, or practically at the same time, I wrote to the gentleman and told him that in doing our business these conditions, blockades, wash-outs, and so on, must be taken into consideration; and the very week afterwards we were advised that the San Pedro road had been washed out, that practically 75 miles of track had been washed out, and they had no railroad. We had some business, one car, going via the Union Pacific, which we had to divert to the Santa Fe. But the shipper is better informed than the initial railroad in a good many cases about the conditions along the route.

Mr. TOWNSEND. I was going to ask you this question: Conceding that it is a fact that the shipper at the competitive points can under the existing law route his freight, is it not entirely proper that the smaller shipper at a noncompetitive point should at least have the same advantage, as far as the rates are concerned in that respect, as the man who resides at the competitive point?

Mr. BELL. I think he should.

Mr. TOWNSEND. Would not this provision give him that right and place him on an equal footing with the other?

Mr. BELL. That was the intention of the provision, as I understood. He should have the same right to route the freight. It is his right anyhow. I think it belongs to him.

Mr. STEVENS. If that is true, how is it that a great concern like the Cambria Steel Company can not route its freight as it pleases?

Mr. BELL. It can.

Mr. STEVENS. It seemed that the manager of that company claimed it did not.

Mr. BELL. No; I did not understand so at all. The Cambria Steel Company can route its freight. Is Mr. Sproull here?

Mr. LINCOLN. He stepped out.

Mr. TOWNSEND. He was arguing that he prized that right, that he thought it was a valuable right to hold to.

Mr. BELL. The consideration that moves me in this matter more than anything else is that the carriers are publishing in all their tariffs

the statement that these rates are subject to the absolute, unqualified right of the initial carrier to route the freight to its destination. That is a menace to every shipper. We do not know what it may lead up to. Nevertheless, if it is sustained by the courts they have that right. It may lead to taking away from the large shipper, even, the privilege of routing his freight, and it leads to a pooling of freights between the carriers if they have that right. I think there should be some provision in the law which would establish the right of the shipper to route his freight to its destination.

Mr. STEVENS. They all ought to be treated alike. There is no doubt about that.

Mr. STAFFORD. Is there any economic convenience to the carrier in controlling the disposition of the route over which the traffic should go when it reaches the terminus of its line?

Mr. BELL. There might be sometimes, perhaps, but usually there is none. They have practically the same length of road and the same facilities for interchanging freight with one line as with another where there are a number of routes and the initial carrier is a party with all the other routes with which it connects to the through and joint rates. They publish and advertise themselves as joint carriers with those connections, and it does not make any difference to them as to whether they deliver to one line or another, from an operative standpoint. It does not cost them any more.

Mr. KENNEDY. To permit the carrier to route the freight would permit a combination of the carriers, one helping the other, to pretty nearly put the other fellows in the same traffic territory out of business, would it not?

Mr. BELL. It certainly would. It would lead to this result. Take the Chicago Great Western west of Chicago. That is a weak line, comparatively speaking. It has agents in New York City and Philadelphia and other points soliciting business for the Chicago Great Western Road. An agent will go to the shipper in Chicago or New York, or go to the shipper in Washington or in Philadelphia, and say: "Have you any business from the Missouri River, or Missouri and Kansas City?" The shipper says: "Yes, I have some freight." Then he says: "Give it to me, and we will give you good service on it from Chicago. Our rates are the same as those of the other routes." The man says: "All right; if you give me good service I do not see any reason why you can not have the car." So he promises it to him. He delivers it to the Pennsylvania Railroad for shipment to Kansas City, routed by the shipper over the Pennsylvania Railroad and the Chicago Great Western at Chicago. The Pennsylvania Railroad says: "Why, we will not deliver that car of freight to the Chicago Great Western Railroad. Here is the Burlington. They are giving us most of their eastbound freight at Chicago, while the Chicago Great Western is giving us very little eastbound freight. We will pay our debt to the Burlington by giving them this car of freight."

There are other similar occurrences of that kind. It leads to a pooling of the business—a tonnage pool—and it is a very effective one. It is worked, too. It is worked now with business which the shipper does not route himself. The railroads in their interchange of freight at Chicago, for instance, between the eastern and western lines, keep a statement. The Lake Shore Road will say to the North-

western: "We delivered to you last month so many tons of freight going to competitive points in the West, and you gave us so much. Even up, and reciprocate. Give us so much to equal the western-point tonnage that we gave you during that month." If they were allowed to handle all their tonnage in that way, you can see what the result is.

Mr. STEVENS. Then we are up against this proposition, as I understand it: We are up against possibilities of delays and combinations on the part of the railroads if they control the freight, and discriminations and rebates on the part of the shippers if they control the freight?

Mr. BELL. I can not see where the discrimination and rebating comes in on the part of the shipper. You can work manipulation on almost everything; but it seems to me a chimera to suppose that giving the shipper the right to route his freight would accomplish anything in the way of rebating.

Mr. STEVENS. I can see where it would accomplish a good deal. I realize what you state about the possibility of delays, because I know in the case where the Great Western itself or somebody furnishing material for the Great Western itself, purchasing the material in Pittsburg and routing it over the Burlington and Pennsylvania routes, but allowing the material for the Great Western itself to be routed over its own line. I know something of that case.

Mr. BELL. For that matter, the railroads are the largest purchasers of materials, I suppose, in the country; and every man who deals with them, every manufacturer who sells them goods, considers that in selling the goods. He will, naturally, and he ought to. When a railroad buys goods of him he ought to reciprocate and give that railroad a share of his tonnage.

Mr. STEVENS. But the public has an interest beyond the interest of either the railroad or the shipper.

Mr. BELL. It certainly should not be required of a shipper that he should divide up his tonnage between the different railroads. That is all—that he should give so much to this railroad and so much to that, and that he should establish a pooling arrangement. In other words, should it be his duty to see that every railroad received its proportionate share of the tonnage?

Mr. ESCH. Does this reciprocity as to the interchange of cars between carriers affect the routing of freight?

Mr. BELL. It does in a measure; yes. It does in this way: For instance, our company will send an order to Pittsburg for a carload of freight going to a point in the West reached by several different railroads—say Kansas City—and we will say to the initial road: "We would like to have you route this via the Rock Island Road beyond Chicago—the Pennsylvania and Rock Island roads." It may be at a time when cars are lacking, and the Pennsylvania Road does not want to let their car go west of Chicago, and the shipper with whom the order is placed says to us: "We can not get the Rock Island car, but we have a Burlington car here that we can load." We say: "All right, you load that car and send it over the Burlington instead of over the Rock Island from Chicago." It works out in that way quite frequently.

Mr. KENNEDY. Suppose a Pennsylvania car carries freight west of Chicago loaded and goes on west to Denver, say. Would it be likely to be routed back over the Pennsylvania lines if it was loaded east?

Mr. BELL. A Pennsylvania car loaded west would come back over the Pennsylvania line east; yes.

Mr. ESCH. What is your view with reference to the time within which a rate should be quoted?

Mr. BELL. I think it should be done very promptly. I agree with Mr. Lincoln that forty-eight hours is a reasonable time within which any average quotation could be made. I do not believe there is one case out of a thousand probably where it would require any greater length of time than that to make a rate. I think Mr. Townsend made reference to a case where the information was asked from a road that was 2,000 miles away from here.

They have tariffs published from Chicago to certain points; from St. Louis to a certain territory east thereof and to points in Arizona, and going up to the local points in Arizona. Those tariffs are published so that a man can ascertain at once from the tariff right in his own office, in Chicago, or in New York, what the rate is from that point to the point of ultimate destination in Arizona. There is hardly a point in the United States but what the agent, if properly equipped, can quote a rate to that point within forty-eight hours; and if he can not get it from his own tariff authority he can wire for it and get it very quickly.

Mr. TOWNSEND. I can see the practical working of that very well—how a man would probably do—but ought we to pass a law, a hard and fast law, saying what a carrier should do when it would be impossible for it to do it? What would the law amount to?

Mr. BELL. I do not think we should state any specified time. I think "reasonable time" is all right.

Mr. TOWNSEND. That was the point I made, because those with whom I talked all thought it was proper, except what I heard Mr. Lincoln and somebody else say yesterday.

Mr. LINCOLN. I think I was misunderstood about the forty-eight-hour period. I think I stated that they could almost all be ascertained within forty-eight hours.

Mr. TOWNSEND. You are right about that.

Mr. LINCOLN. And that it ought to be a reasonable time.

Mr. TOWNSEND. You are right about that. I do not believe there would be any disposition on the part of the railroads to delay, and I think they would furnish the information if they could.

Mr. BELL. They are glad to quote rates, because they anticipate business. If a shipper asks for a rate, he has business, and the railroad which first gives him a proper and correct rate is very likely to get his business.

Mr. STEVENS. Is there anything further, Mr. Lincoln?

Mr. LINCOLN. I would like to ask Mr. Jennings to address you for a moment, as he wants to get away.

STATEMENT OF MR. C. A. JENNINGS, OF CHICAGO.

Mr. JENNINGS. I simply wanted to present a feature or two in a concrete form as possibly bearing upon the question of option of route controlling with the shipper. There are cases where the railroad assuming this privilege may harm simultaneously the shipper and another carrier. To illustrate, there is a rather small road known as the Midland Valley, operating from a point near Fort Smith out

through Oklahoma. They raise considerable cotton and, I think, they have a few cotton-seed oil mills on their line, there being two rather extensive ones at Fort Smith. The oil product from crushing cotton seed makes a most desirable freight, and it would be naturally, I think, to the interests of the Midland Valley Railroad, to move a great proportion of this seed to Fort Smith for crushing, getting the revenue on the seed, and if possible the distribution of the seed products, the meal and hulls, west. They have no line into Fort Smith. The mill at Fort Smith says to the Midland Valley official, "If you will bring your seed into Fort Smith we will give you the revenue on an equivalent in products." It is to the advantage of both the carrier and the mill man, and with the option of route taken from the shipper, we will say he offers a car to the Kansas City and Southern, a connection of the Midland Valley, routed by Poto—I am not sure as to the junction point—Midland Valley and Santa Fe and Denver. The Midland carrier has an option of the route, and he elects to take the long haul to Kansas City and give it to the delivering line, the Midland Valley thereby being injured as a railroad company. And of course the mill man, the shipper, being injured in reputation at least, in that he can not carry out his agreement with the road that brought the seed in.

Another instance or illustration of harm to the shipper, by conditions entirely without his control, may be cited as follows. I, operating at Chicago, buy a car of oil in Houston, Tex.; a tank car, if you please. I go to the Chicago and Alton Railroad, say, and they ask me what particular route or line I would like to have that car sent with this particular load of oil. "Why, route it M., K. & T. and H. T. C., if you please." The H. & T. C., as the initial line, for some reason best known to themselves, elect to give that car to the Frisco, the Frisco carrying it back to Alton and giving it to the delivering line. We are responsible for the empty movement of that car south by the M., K. & T., and we have to pay them for it. We have no recourse. You might say that we might send the car back again by the Frisco, but it might be diverted again.

Another instance, and then I will conclude. It is customary in the handling of grain and feedstuffs, by eastern and New England roads, to arrange with various receivers there for a stoppage and distribution at a point of convenience. We will take, as an instance, Franklin & Co., large dealers at Buffalo. They operate extensively throughout the East, and they have an arrangement duly published, and legal so far as I know, for stopping grain at Buffalo, subject to redistribution, and they make these purchases from a Mississippi mill and as best suits their plans and economies, it must go into Buffalo over the Nickel Plate Road. I sell the car, and sell the car and shipment from a Mississippi mill, and unless Platt & Co. can get that in over the Nickel Plate it does not serve their purpose. There is no question of the rate; the rate applies by the Erie, the Lake Shore, and the Michigan Central alike, but the distribution conveniences of these shippers demand the movement of that car via the Nickel Plate as an intermediate road. I so route it. It may be given to the Michigan Central, involving a considerable expense, because Platt & Co., under their published, and so far as I know legal, arrangements, can not use it on the Michigan Central.

Mr. STEVENS. That is quite true, but here is a situation that I think developed before this committee two or three years ago, and your speaking of the Frisco Road recalls it to me. It was stated to us, and I noticed in print in some of our hearings, that the Frisco Road has a large strawberry traffic at certain times, at a certain period of the year. That road has not a sufficient equipment to take care of that traffic, and it has to be taken care of within a period of ten days or two weeks. In order to get that traffic properly cared for, the road has to procure proper cars from the different lines, I think centering at St. Louis, and in order to get a sufficient number of cars, they have to be obtained some time in advance, and the Frisco was obliged to promise a certain amount of car traffic to each one of the lines of which it borrowed cars. It necessarily would have to. Now, if the Frisco Road could not control the routing of that traffic, it could not get the cars; and if it could not get the cars, it could not take out those berries and could not supply the means of transporting those goods. What have you to say in a case like that? Who ought to control the routing?

Mr. JENNINGS. I do not see wherein the Frisco, by means of their promises, can assume any proprietary rights in those strawberries.

Mr. STEVENS. But supposing the Frisco could not get the cars to take care of that traffic, and with all the various legislation it can not get the money to buy cars, what is going to happen?

Mr. JENNINGS. Should the shipper assume the disability of the carrier?

Mr. STEVENS. But what is going to become of those strawberries while you are arguing?

Mr. JENNINGS. I do not know, I am sure.

Mr. STEVENS. That is something we have got to find out. That man has got to ship his strawberries.

Mr. WASHBURN. Is not the answer to that that the shippers would have to get such a community of arrangement that the railroads' best interests would be to take care of their shipments?

Mr. TOWNSEND. If those facts were presented to the Interstate Commerce Commission, they would make an exception of that case, would they not?

Mr. JENNINGS. I do not know.

Mr. STEVENS. It is contended here that there is a property right existing in the right to route freight.

Mr. JENNINGS. I suppose that to be true.

Mr. STEVENS. If that is true, in this case I have given of the strawberry traffic if the shipper insisted on his right to route the freight, it might destroy the possibility of his moving his strawberries, and of his neighbors moving their strawberries?

Mr. JENNINGS. Yes.

Mr. STEVENS. Well, then, there ought not to be any property in it.

Mr. WASHBURN. Is the shipper interested in maintaining a right that would prevent his own traffic from being moved?

Mr. JENNINGS. I would say that a railroad is supposed to have sufficient equipment to meet these demands. If it does not, that is not the fault of the shipper; and the railroad has the right to go out among those carriers, or borrow the cars on a reciprocal basis, the best way it can.

Mr. RICHARDSON. Is not the effect that some of these roads that are not so well equipped borrow these cars, and that the railroad fur-

nishing the cars to that road not so well equipped charges so much per day for the use of a car; and is it not a fact that those very common carriers that are not so well equipped make use of those cars for their equipment?

Mr. JENNINGS. I so understand it.

Mr. RICHARDSON. In their own transportation and in carrying on their own business, at the expense of the larger companies who have equipped themselves with those cars?

Mr. JENNINGS. I understand that that is frequently a complaint of the larger companies, that they have to carry the umbrella over the little fellows.

Mr. RICHARDSON. Certainly.

Mr. TOWNSEND. Would not it result from that that it was not to their interest to make general traffic relations with a road that did not furnish equipment?

Mr. JENNINGS. I suppose so.

Mr. STEVENS. It was also shown to this committee at one time that the peach crop of Georgia required, within two or three weeks, over 7,000 cars, and that those cars had to be stored for several months in advance. The principal road that moved that traffic was the Central Railroad of Georgia, and that was insufficiently equipped. Now, under the Harriman lines, it may have gotten more equipment, but at that time, as an independent line, and a small independent line, it could not get the equipment, and now a small independent line can not borrow the money and it can not get the equipment. Now, those 7,000 cars had to be furnished within a few weeks, and the Central Railroad Company could not get the money or the cars, and the only way of getting them would be by the favor of the other lines, and the only way those roads would furnish the cars, outside of refrigerator cars, would be by some kind of an arrangement by which they would receive those cars back loaded. Now, if those people had a right to determine that routing, the Central Railroad of Georgia could not get the cars and the growers could not sell their peaches.

Mr. JENNINGS. You have selected both instances from emergency conditions. You are talking about perishable freight.

Mr. STEVENS. I am talking of instances given to the committee.

Mr. JENNINGS. An emergency can be met with emergency methods.

Mr. STEVENS. It can not be met if there is a property right, as you gentlemen claim, in the right to move freight.

Mr. JENNINGS. The shipper may under such conditions temporarily waive his property right.

Mr. STEVENS. You would find some of them would not, and you can not depend on that to move freight.

Mr. WASHBURN. Do you not think that the shipper would waive his right to designate the route if it made it impossible for him to move the freight on which he depends to make a living?

Mr. STEVENS. Do you think it is possible to depend on the waiver of every shipper?

Mr. TOWNSEND. Mr. Stevens has been citing the case of an indigent road, or one not well equipped, and has been speaking of its going to one or several other roads and getting cars. Now, the shipper of freight in the first place has to have the cars?

Mr. JENNINGS. If he wants to move the freight.

Mr. TOWNSEND. He makes arrangements for those cars himself, does he not?

Mr. JENNINGS. The shipper?

Mr. TOWNSEND. Yes; he makes that provision?

Mr. JENNINGS. He requisitions them, I suppose; he applies for them.

Mr. TOWNSEND. Of course. That is the only way that the carrier has of knowing that a car is wanted, because he asks for it?

Mr. JENNINGS. Yes.

Mr. TOWNSEND. Will he not make some arrangement with the road that owns those cars? Do they not generally make some arrangement?

Mr. JENNINGS. The shipper?

Mr. TOWNSEND. Yes.

Mr. JENNINGS. I do not know that I am competent to answer that.

Mr. TOWNSEND. I do not know that it is the rule. I know in the grape belt two years ago in Michigan that was taken up by the shippers' commission, and they applied for the cars to the road over which they were to ship.

Mr. SPROULL. I think you are right. I think that the shipper will say to the railroad "If you want this freight, you supply the cars to move it."

Mr. TOWNSEND. I know I was up in the grape-belt district when they could not get the cars, and we took it up with each of the connecting lines and we succeeded in getting the necessary cars.

Mr. JENNINGS. I do not think that these perishable movements, if I may so term them, which must certainly be a small percentage of the vast tonnage of this country, should serve as a precedent or predicate for rules and regulations governing the movement of all the rest of the traffic.

Mr. STEVENS. Should the reverse be the case? Should you insist on rules and regulations that would interfere with the possible movement of the perishable freight?

Mr. JENNINGS. No, sir; and I think some rules and regulations should be made and provided.

Mr. STEVENS. So do I.

Mr. ESCUE. In this very section of the proposed bill, regarding the routing, we say:

The person, firm, or corporation making such shipment, subject to such reasonable exceptions and regulations as the Interstate Commerce Commission shall from time to time prescribe.

Might these fruit shipments that have been suggested here be made the subject of exception and regulation by the commission?

Mr. JENNINGS. I would think, under the circumstances prescribed by the gentlemen, that they might reasonably be.

Mr. STEVENS. But if that is done that destroys the property right of moving freight, does it not?

Mr. JENNINGS. For the time being; yes, sir.

Mr. STEVENS. Yes; there is just the point.

Mr. RICHARDSON. Do you not think that there is an underlying principle in all these matters—that is, as to common carriers—that they are trying and seeking to establish the very best relations with those who patronize them, and they want to live on good terms with them? Is there not some matter of good faith upon the part of a common carrier when a man goes to him, a shipper, and puts his property in his hands and tells him to send it to a certain destination? Do you think it would be good faith, and that it would be treating his patron right for him with that discretion in his hands, the shipper depending

in him, if he should send it by the most expensive route? Would not that soon lose him his popularity and his trade, too?

Mr. JENNINGS. Absolutely, yes; but I do not think there is involved in this question very much of the element of expense.

Mr. RICHARDSON. Why do you speak so earnestly in favor of the shipper being allowed to select his own route?

Mr. JENNINGS. Why, first, because I contend that it is the shipper's property; he has paid his money for it; it is his. He simply offers it to the railroad for transportation, paying them a legally established rate for that transportation. The shipper may have some personal economic end in view in the matter of selecting his route. He may want to reward a friend, or he may want to punish an enemy, as the gentleman has aptly remarked.

Mr. RICHARDSON. Yes; but now is it not a fact that the railroad authorities, if they are acting in good faith and honestly with the trade that they secure and get, would understand, over the different competing routes that are open to them, the conditions existing of freight and traffic, and all the things in relation to their business, better than the shipper, and would they not select for the shipper the best route?

Mr. JENNINGS. The best route according to the railroad's views, but not according to the shipper's views.

Mr. RICHARDSON. According to the railroad's views; I am talking about that. Would the railroad select the most expensive route and the one that would cause the most delay and that would cause the property to deteriorate?

Mr. JENNINGS. Probably not premeditatedly; no. But the point that I have made and which I have still in view is that this is not the railroad's property; it is the shipper's property.

Mr. STAFFORD. In the two cases you first instanced, the shipper designated the car for the San Francisco system in one instance and in another instance he designated the Nickel Plate system and the railroad dispatched the cars by other routes. You have mentioned some arrangement with the railroads whereby it was to the interest of the shipper to carry the property over the route designated. Will you kindly explain what that was?

Mr. JENNINGS. Will you kindly designate the instance to which you refer?

Mr. STAFFORD. Take either one of the instances you mentioned and explain, so that I can understand, where the shipper had a direct interest to have the car dispatched over either one of the lines designated.

Mr. JENNINGS. In case of the car being sent to Houston, Tex., for a load of oil, going south via one line and coming back north via another, the interest of the shipper lay in his responsibility for the payment for this empty haul from St. Louis to Sherman, we will say, without the road getting a compensating load. I do not know what the distance is, but we will estimate it.

Mr. WILSON. It is 636 miles.

Mr. JENNINGS. Six hundred and thirty-six miles, and the rates provide that that movement shall be charged for at 10 cents a mile.

Mr. WILSON. Perhaps the gentleman does not understand. In the case of the oil shipment you mentioned, it is your necessity to send a car down to that oil mill for your oil.

Mr. STAFFORD. That is what I wished to have him bring out and explain, because I did not get it clear.

Mr. JENNINGS. That is what I say. We are responsible for the empty movement of that empty car, it being a tank car and a privately owned car.

Mr. STAFFORD. You have not a full right to it, and you claim you should have control of its travel?

Mr. JENNINGS. I am not speaking of the property rights in the tank car. The railroad company pays us for the use of that tank car, of course, on a mileage basis; but that is one of the features. Now, the car responsibility there is very clear. It is \$63.60 on that movement, unless we are able to equalize it.

Mr. WILSON. Unless you get a haul for that car, you have to pay for the mileage.

Mr. JENNINGS. Yes.

Mr. STAFFORD. But you do not have to pay for the empty haul if you give a loaded haul?

Mr. JENNINGS. No.

Mr. RICHARDSON. When you ship property over a certain line of road until it reaches a common point where it is to leave that road and go off on another common carrier's line, with which common carrier you have not got any traffic connection—any joint traffic rate—and over which you do not send your cars at all, do you not unload your property right there at that place and turn it over to the common carrier you have got no traffic relations with?

Mr. JENNINGS. I hope you will pardon me; I do not believe I quite catch your question.

Mr. RICHARDSON. I can hardly get it out of my own mind. Take a main road that runs down to a main point—a distributing point.

Mr. JENNINGS. Yes; a junction point.

Mr. RICHARDSON. And suppose I have given instructions for my property to be shipped over that line to a given place, and it gets to that point and there is no joint freight arrangement with another road that comes in there; what is done about it? The cars are not sent over on that road with which the line of origin has no joint freight traffic arrangement?

Mr. JENNINGS. Now, are you speaking to me as a railroad man and asking me to answer that?

Mr. RICHARDSON. Yes; I want it for my own information, if for nobody else's.

Mr. JENNINGS. Because I am not competent to speak as a railroad man.

Mr. RICHARDSON. You are not?

Mr. JENNINGS. No, sir.

Mr. RICHARDSON. I am not competent on that either, but I want to get at this, because I am getting at this idea, as far as I can get it into your mind, and incompetent as I am to tell just exactly what I do want to know. Are there not certain conditions that people complain of in this country by reason of the fact that one railroad, one common carrier, will not let its cars run off on another common carrier's tracks, with which common carrier it has not any joint freight relations, nor any business, and therefore you delay the freight by unloading it and turning it over to the other carrier? Is there any way by which that carrier which unloads the car can be made to run his car on that other line?

Mr. JENNINGS. I do not know as to that.

Mr. RICHARDSON. You do not know. I do not either. What about that, Mr. Lincoln?

Mr. LINCOLN. I understand the point you have raised is one that has gone to the federal court.

Mr. RICHARDSON. You understand what I am after?

Mr. LINCOLN. I think I do. It is requiring the connecting line to accept the car with that freight in it.

Mr. RICHARDSON. That is right.

Mr. NEALE. And without a traffic agreement.

Mr. RICHARDSON. Yes.

Mr. LINCOLN. Without any connection, or whether the connection can refuse to accept the car, or whether he can require the connection to take the car, if they decline to take it.

Mr. RICHARDSON. That is exactly the point I am after.

Mr. LINCOLN. Now, we will take from A to B, the destination being a remote destination, the line running from A to B and from B to C, there being no joint rate or joint through rate.

Mr. RICHARDSON. No connection with them.

Mr. LINCOLN. You mean no physical connection?

Mr. RICHARDSON. No traffic connection.

Mr. LINCOLN. But there is a physical connection.

Mr. RICHARDSON. Yes.

Mr. LINCOLN. The question is as to whether the line shall be required to let the car go through—the originating line!

Mr. RICHARDSON. Yes.

Mr. LINCOLN. I say I am not sure on that point, whether you can require the car to go through.

Mr. RICHARDSON. There is no law now that requires that?

Mr. LINCOLN. I do not believe there is any law now that requires them to go through—requiring that the initial line's car shall go through.

Mr. RICHARDSON. What I am getting at is this. Suppose the shipper who is arranging his route selects a route under such conditions that his freight is submitted to that delay at the point where it reaches this connection, the carrier will not turn his train over to the other carrier?

Mr. LINCOLN. I have my view on that point.

Mr. RICHARDSON. What is it?

Mr. LINCOLN. If the carrier accepts a shipment to move from A to C, through B, where his line terminates, and accepts it as a through shipment under section 20 of the commerce act it has to go through. If the connection fails to transfer it, they will then have to take the property through or decline to give a bill of lading beyond their own lines, or have the shipper go there and reship on the other road. Of course, under the joint traffic agreement there is no question of their taking it.

Mr. RICHARDSON. The initial carrier ought to be required to carry that freight to the destination?

Mr. LINCOLN. If he has accepted it for that destination; but if he has no traffic arrangement or arrangement for interchanging cars and ships it to the local point, the man will have to receive his property there and arrange for a new shipment.

(At 4.30 o'clock p. m. the committee adjourned until 10 o'clock to-morrow morning.)



